The Law of Search Manual

The Law of Arrest, Search & Seizure Manual

M-69

Immigration and Naturalization Service
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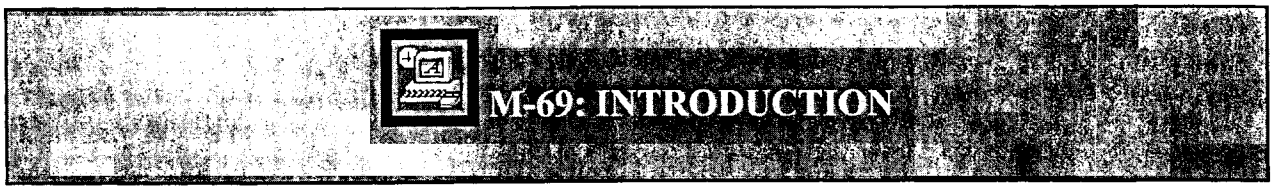


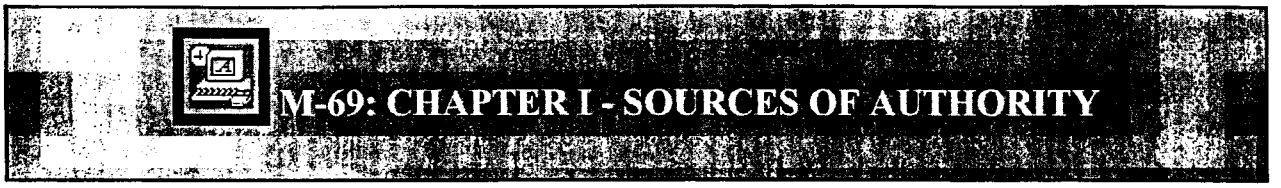
M-69: INTRODUCTION

The Immigration and Naturalization Service (INS or the Service) is charged with the administration and enforcement of the Immigration and Nationality Act (the Act) and other laws relating to the immigration and naturalization of aliens. The methods that the INS uses to enforce the immigration laws enacted by Congress must conform to constitutional and statutory limitations as well as INS regulations. This is an update of the M-69, last updated in January 1983. It outlines the statutory and constitutional boundaries of an INS officer's authority. The enforcement activities of the INS involve both border operations (conducted along the border and its functional equivalents and at ports of entry) and operations conducted in the interior of the United States.

Questions regarding search and seizure requirements should be referred to supervisors or legal counsel. Counsel should be consulted before conducting any enforcement activities that might result in litigation, media attention, or public controversy. Early consultation will ensure the best possible legal support for the enforcement operation and permit timely legal advice to avoid potential problems.

The M-69 is intended for the daily use of INS officers. It is not a law textbook. It does not cover all aspects of the law of arrest, search, and seizure, but is limited to recurring circumstances where the authority of INS officers may be challenged.

Citations of authority are located at the end of the text. The authorities cited may be obtained from the district or regional counsel.



The primary sources of authority granted to officers of the INS are the Act, found in Title 8 of the United States Code, abbreviated as, "8 U.S.C.", and other statutes relating to the immigration and naturalization of aliens. The secondary sources of authority are: (1) administrative regulations implementing those statutes (primarily those found in Title 8 of the Code of Federal Regulations, abbreviated as "8 C.F.R."); (2) judicial decisions; and (3) administrative decisions of the Board of Immigration Appeals.1

The Constitution of the United States protects the rights of the people of the United States. All authority exercised by INS officers must conform to constitutional limitations, such as the fourth amendment. For example, while section 287(a)(3) of the Act appears to authorize officers to make warrantless vehicle stops in border areas, the Supreme Court in United States v. Brignoni-Ponce 2 concluded that the fourth amendment precluded stopping a vehicle to question the occupants concerning their immigration status on less than a reasonable suspicion that the vehicle may contain aliens illegally in the United States, except at the border or its functional equivalents. See Chapter III(B)(5), infra.

A. THE FOURTH AMENDMENT

The fourth amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The amendment consists of two clauses. One clause prohibits unreasonable searches and seizures. The other requires that warrants be issued only upon a showing of probable cause and upon meeting certain other conditions regarding the place to be searched and the persons or things to be seized.

B. THE IMMIGRATION AND NATIONALITY ACT

Subject to constitutional limitations, INS officers may exercise the authority granted to them in the Act. The following statutory provisions relate to enforcement authority:

(1) Section 287(a)(1) [8 U.S.C. 1357(a)(1)] -- provides authority, without a warrant, to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States.

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(2) Section 287(a)(2) [8 U.S.C. 1357(a)(2)] -- provides authority to make an arrest of an alien who in the officer's presence or view is entering or attempting to enter the United States in violation of the immigration laws, or who the officer has reason to believe (judicially construed to be the equivalent of probable cause under the fourth amendment) is in the United States in violation of the immigration laws and is likely to escape before an arrest warrant can be obtained.

(3) Section 287(a)(3) [8 U.S.C. 1357(a)(3)] -- provides authority within a reasonable distance of any external boundary of the United States to board without a warrant any vessel within the territorial waters of the United States and any railway car, aircraft, or vehicle and search for aliens; and authority to enter private lands (but not dwellings) within 25 miles of the border for purposes of patrolling the border to prevent illegal entry of aliens.

(4) Section 287(a)(4) [8 U.S.C. 1357(a)(4)] -- provides authority to arrest without a warrant for felonies which have been committed and which are cognizable under the federal criminal laws regulating the admission, exclusion and/or expulsion of aliens where the officer has reason to believe (probable cause) that the person arrested is guilty of such felony and is likely to escape before a warrant may be obtained, provided that the person arrested is taken without unnecessary delay before a magistrate for arraignment.

(5) Section 287(a)(5) [8 U.S.C. 1357(a)(5)] -- provides authority to make general arrests without a warrant for crimes cognizable under federal law, to carry firearms, and to execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States. Section 287(a)(5)(A) provides that an INS officer may arrest for offenses against the United States committed in his or her presence. A person arrested must be taken without unnecessary delay before a magistrate for arraignment. Section 287(a)(5)(B) provides that an INS officer may arrest for any felony cognizable under the laws of the United States if the officer has reason to believe (probable cause) that the person to be arrested has committed or is committing such a felony.

To exercise authority under section 287(a)(5)(A) or (B), the officer must be performing duties relating to the enforcement of the immigration laws at the time of the arrest and there must be a likelihood the person will escape before an arrest warrant can be obtained. The officer also must be certified as having completed a designated training program prior to making arrests under section 287(a)(5)(B). The authority contained in section 287(a)(5)(B) cannot be exercised until the Attorney General promulgates final implementing regulations. A Notice of Proposed Rulemaking for such regulations was published in the Federal Register on October 14, 1992.3

(6) Section 287(b) [8 U.S.C. 1357(b)] -- provides authority to administer oaths and consider evidence concerning the privilege of any person to enter, re-enter, pass through, or reside in the United States, or any other matter which is material and relevant to the enforcement of the Act.

(7) Section 287(c) [8 U.S.C. 1357(c)] -- provides authority to search without a warrant persons and personal effects of applicants for admission for evidence which may lead to the individual's exclusion from the United States on grounds set forth in the Act.

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(8) Section 287(e) [8 U.S.C. 1357(e)] -- requires an immigration officer to obtain a warrant or the consent of the owner (or his agent) to enter the premises of a farm or other outdoor agricultural operation for the purpose of interrogating a person believed to be an alien as to the person's right to be or to remain in the United States.

(9) Section 235(a) [8 U.S.C. 1225] -- provides authority at the border to board and search any vessel, aircraft, railway car, or other conveyance in which an immigration officer believes aliens are being brought into the United States. This section also empowers officers to administer oaths and take and consider evidence regarding any suspected alien's right to enter, re-enter, pass through or reside in the U.S. or any other matter which is relevant and material to the enforcement of the Act.

(10) Section 274(b) [8 U.S.C. 1324(b)] -- provides authority to seize vehicles, vessels, or aircraft where there is probable cause to believe that the conveyance has been used in violation of section 274(a) (Alien smuggling, transporting, harboring, etc.).

(11) Section 274(c) [8 U.S.C. 1324(c)] -- provides authority to arrest individuals for violations of section 274(a).

(12) Section 274A [8 U.S.C. 1324a] -- provides authority to investigate and assess a civil money penalty to any person or entity for the unauthorized employment of aliens and failure to comply with the employment verification requirements in violation of the Act.

(13) Section 274C [8 U.S.C. 1324c] -- provides authority to investigate and assess a civil money penalty to any person or entity involved in civil document fraud related to any requirements under the Act.

C. OTHER STATUTORY SOURCES OF AUTHORITY

1. Title 18 of the United States Code

There are several provisions under Title 18 that specifically relate to enforcement of the immigration and nationality laws. These provisions are listed in The INS Investigator's Handbook, Appendix 5-5A (1985) or INS Border Patrol Handbook, Appendix 19-A (1985).4

2. Title 19 of the United States Code: Customs Cross-Designation

INS officers who have been specifically cross-designated under 19 U.S.C. 1401(i) may make such customs arrests, searches, and seizures as delineated by Customs Form 55 and the Customs/Border Patrol Memorandum of Understanding, dated July 21, 1986.

3. Title 21 of the United States Code: DEA Cross-Designation

INS officers who have been specifically cross-designated under 21 U.S.C. 878 may make such limited arrests, searches, and seizures as delineated by the Drug Enforcement

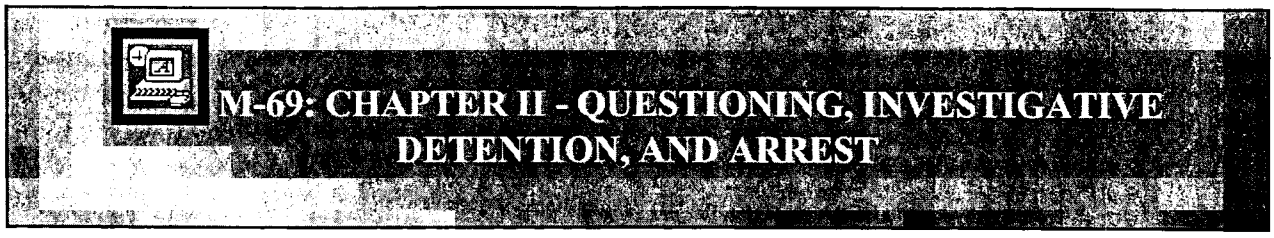
Administration's (DEA) delegation of authority to the named agent and the DEA/INS Memoranda of Understanding of November 29, 1973, and August 1986.

4. Local Law

Some states accord "peace officer" status to INS officers stationed in that state. The nature and extent of such "peace officer" authority depends entirely upon applicable state law. INS personnel should contact legal counsel for information regarding the extent of any authority granted by state law.

D. ADMINISTRATIVE REGULATIONS

Title 8 of the Code of Federal Regulations, in particular Part 287, further delineates the enforcement authorities of INS officers. Section 287.3 of the regulations governs the disposition of cases of aliens arrested without a warrant. Section 287.4 governs procedures for executing, serving, and enforcing subpoenas. Section 287.5 gives any immigration officer the power and authority to administer oaths in or outside the United States. Section 287.7 provides that immigration detainers may be issued by an immigration officer as defined in section 101(a)(18) of the Act, 8 U.S.C. 1101(a)(18), and only in the case of an alien who is amenable to exclusion or deportation proceedings under any provision of law. In response to Congressional mandate in section 287(a)(5) of the Act, 8 U.S.C. 1357(a)(5), Part 287 will be subject to substantial revision in conjunction with the assumption of general arrest authority by immigration officers. As noted above, a proposed rule to this effect was published on October 14, 1992.



At the border or a port of entry, section 235(b) of the Act authorizes the stopping and questioning of all persons seeking admission to the United States regarding their right to legally enter, and authorizes detaining any alien for further examination by an immigration judge unless the alien appears to the officer to be "clearly and beyond a doubt" entitled to enter. In the interior, section 287(a)(1) of the Act authorizes immigration officers to interrogate persons reasonably believed to be aliens as to their right to be in or remain in the United States. Generally, this authority extends to the limits permitted under the fourth amendment 5. The limits of the fourth amendment depend upon the degree of intrusion on privacy and the nature of the encounter between an officer and individual.

The three principal levels of encounters between immigration officers and the public at locations other than the border are: (1) consensual encounters, where the person is free to leave at any time or may refuse to answer any questions; (2) investigative stops, which must be supported by the officer's reasonable suspicion, and which only permit a brief detention of the suspect; and (3) arrest, which must be supported by probable cause to believe the suspect has violated any law that the officer is authorized to enforce.

In encounters between the immigration officer and individuals represented by counsel, the officer should be thoroughly familiar with INS policy. The guidelines ensure recognition of the constitutionally protected area of attorney-client privilege. These guidelines are contained in Appendix B. Questions concerning the applicability of the guidelines should be referred to supervisors or legal counsel.

A. QUESTIONING AND DETENTION NOT AMOUNTING TO ARREST

1. Questioning at the Border and Functional Equivalent of the Border

Travelers may be stopped at the international border and required to identify themselves as entitled to enter the United States and to show that their belongings and effects may lawfully be brought into the country 6. Section 235(a) of the Act authorizes an immigration officer to examine all persons arriving at ports of the United States and to question under oath any person suspected of being an alien concerning the right to enter, re-enter, pass through, or reside in the United States, or any other matter related to enforcement of the Act and concerning his or her purpose in coming to the United States. Such questioning and examination is not limited to ports of entry, but may be performed anywhere along the international border and at a functional equivalent of the border.

2. Non-Border Consensual Encounters

Not all personal interaction between government officers and private individuals is a seizure of the person 7. As long as officers do not by means of physical force or show of authority restrain the freedom of an individual to walk away, no seizure has occurred and fourth amendment limitations do not apply 8.

INS officers should address questions to individuals in a way that promotes cooperation. To this end, they should identify themselves as INS officers and perform their duties in a professional manner.

3. Non-Border Detentive Encounters

An encounter may constitute a seizure from the outset. An initially consensual encounter between an INS officer and an individual may escalate into a fourth amendment seizure. A seizure occurs when, in view of all circumstances surrounding the incident, a reasonable person would believe that he or she was not free to leave the presence of the officer 9. The "reasonable person" test presumes an innocent person 10.

Officers may briefly detain a person for questioning when the officer has a reasonable suspicion based on specific articulable facts that the person stopped is, was, or is about to be, engaged in a violation of a law the officer has the authority to enforce 11. An officer has not seized a person merely by inquiring about identity, requesting some identification, or requesting consent to search luggage or other areas.

An INS officer may briefly detain a person if there is reasonable suspicion to believe that the person is or has violated any criminal statute which the officer is authorized to enforce 12. INS officers also may briefly detain a person if they have reasonable suspicion that the person may be an alien who is illegally in the United States 13.

In connection with a brief detention under these circumstances, officers may conduct a "frisk" or pat down search of the outer clothing of the individual for weapons to protect their safety and the safety of others if the officer reasonably believes the individual to be armed 14. The officer may reach inside the outer clothing to remove any item he or she believes to be a weapon 15. The officer may not, however, remove an item from the suspect's clothing that the officer does not reasonably believe is a weapon.

To determine whether an officer's articulated suspicions are "founded" or "reasonable," the courts will examine the totality of the circumstances, including: (1) objective observations, (2) information in police reports, (3) modes or patterns of operation of certain types of lawbreakers, (4) informant's tips, and/or (5) all other pertinent information 16. Such evidence must be weighed in light of the particular officer's training and experience, and viewed with common-sense deductions about human behavior. The whole picture must yield a reasonable suspicion that the particular individual stopped is engaged in criminal activity.17

While an encounter between an officer and a pedestrian does not necessarily constitute a fourth amendment seizure, a vehicle stop is always a "seizure" and, therefore, must be justified by reasonable suspicion that illegal aliens may be being transported within the vehicle 18. However, once a vehicle is lawfully stopped based upon reasonable suspicion, officers may

order the occupants to exit the vehicle for questioning if reasonably necessary to secure the officer's safety 19. See Chapter III for further analysis of investigatory stops and searches of vehicles.

B. ARREST

An arrest occurs when a reasonable person in the suspect's position would conclude that he or she is under arrest 20. An arrest does not depend solely upon whether the officer announces that the suspect has been placed under arrest. If an officer's conduct is more intrusive than an investigative stop, an arrest may take place 21. In determining whether the officer's conduct is tantamount to an arrest, consideration must be given of facts and circumstances, such as: (1) when and where the encounter occurred; (2) the duration of the encounter; (3) the number of officers present; (4) what the officers and suspect said and did; (5) the use of weapons, handcuffs, a guard blocking the door, or other physical restraint; (6) the nature of the questioning; (7) whether officers escorted the suspect to another location for questioning; (8) whether the officer retained custody of important travel or identification documents during the encounter; and (9) whether the suspect was permitted to leave following the encounter 22.

An arrest must be supported by probable cause to believe the person has committed an offense against the United States. Otherwise, the arrest will not withstand a fourth amendment challenge. Probable cause is knowledge or trustworthy information of facts and circumstances which would lead a reasonably prudent person to believe that an offense has been committed or is being committed by the person to be arrested. Probable cause is more than mere suspicion or the observation of behavior that is merely suspicious, but there does not have to be absolute certainty of guilt. In determining whether probable cause was present at the time of an arrest, courts consider the totality of the circumstances as viewed by a reasonable prudent officer coupled with the officer's training and experience. Pertinent factors include: personal knowledge or observation by the officer; information contained in official communication to the officer; information from reliable informants, victims or witnesses; actions and appearance of the suspect(s); criminal reputation of the suspects; inconsistent and unpersuasive answers to routine questions; and possession, disposal, or concealment of evidence.

An INS officer is authorized to make arrests for both administrative (civil) and criminal violations of the Act. The procedures for administrative and criminal arrests differ substantially and will be addressed separately.

1. Administrative Arrest (Civil Arrest)

a. Authority and Purpose of Administrative Arrest

The law strongly favors the use of an arrest warrant, even for a non-criminal arrest. Therefore, warrants are required unless a specific exception to the warrant requirement exists. The Act and regulations promulgated pursuant to the Act address the warrant requirement in administrative arrest situations, i.e., where the only legal action to be taken relates to the exclusion or deportation of an alien.

Section 287(a)(5) of the Act authorizes immigration officers to execute and serve any warrant, subpoena, summons, order, or other process issued under the authority of the United States. Section 242(a) of the Act provides the authority to arrest an alien upon warrant of the Attorney General pending a determination of his or her deportability. When an order of deportation becomes final, the alien may be detained or released on bond pursuant to section 242(c) of the Act. INS may detain an alien under section 235 of the Act at any time to exclude and deport him or her after he or she has been finally ordered excluded pursuant to section 236 of the Act.

Section 287(a)(2) of the Act empowers an INS officer to arrest without warrant any alien "who in his presence or view is entering or attempting to enter the United States" in violation of any immigration law or regulation, or any alien in the United States "if he has reason to believe" that the particular alien is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest. The words "reason to believe" in this statute have been interpreted to mean "probable cause." 23

Likelihood of escape before a warrant can be obtained may be shown by evidence of previous escapes or evasions of immigration authorities 24, as well as lack of ties to the community such as family, home, or a job. Attempted flight from an INS officer or nervous behavior suggesting that the suspect is looking for an opportunity to abscond may justify an arrest without a warrant 25. The mobility of the suspect may justify a belief that the suspect is likely to escape before a warrant can be obtained 26.

The regulations provide that an alien arrested without a warrant under section 287(a)(2) of the Act shall be taken without unnecessary delay before an INS officer other than the arresting INS officer and examined concerning his or her right to enter or remain in the United States. If no other qualified INS officer is readily available and it would entail unnecessary delay to take the alien before another INS officer, the arresting INS officer may examine the alien if the conduct of such an examination is part of the duties assigned to that arresting INS officer. The purpose of this procedure is for the examining officer to decide if there is sufficient evidence to determine whether the individual is an alien who is excludable or deportable 27.

b. Warnings Required Following Administrative Arrest

Once the examining officer determines that formal exclusion or deportation proceedings will be instituted, certain advisals must be given to the alien. The alien must be informed of the reason for the arrest, of the right to be represented by counsel of his or her choice at no expense to the Government, and of the availability of free legal services programs and of organizations recognized pursuant to 8 C.F.R.292.2 located in the district where the proceedings are to be held. The alien must be given a list of such programs and organizations. The alien also must be advised that any statement made may be used against him or her in a subsequent proceeding 28. If arrested without a warrant, the alien must be advised that a decision will be made within 24 hours whether custody will be continued or whether release on bond or on personal recognizance will be available 29. The I-221 (Order to Show Cause) provides the required warnings to aliens placed in deportation proceedings or granted administrative voluntary departure. Miranda warnings need not be given where the only contemplated legal action against the alien is exclusion, deportation, or voluntary departure.

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Where the alien is in custody and the focus of the interrogation shifts to contemplated criminal prosecution, Miranda warnings should be given. If Miranda warnings are not provided evidence derived is inadmissible, unless it is otherwise discoverable. See Chapter II(B)(2)(c), infra.

Pursuant to a stipulated settlement agreement with the agency that is effective through early 1995, aliens arrested under section 287(a)(2) of the Act will be provided with a "Notice of Rights" (Form I-826). Upon request, such aliens will also be given two hours to contact counsel before questioning can proceed. Those aliens whom the INS has determined will be offered the option of voluntary return in lieu of deportation proceedings, and who accept this offer, will be provided a "Request for Disposition" (Forms I-827A and I-827-B).

2. Criminal Arrest

a. Authority

Whenever feasible, INS officers should obtain a warrant prior to making an arrest.

Section 287(a)(4) of the Act permits officers authorized by the Attorney General through regulation to arrest without a warrant any person for felonies cognizable under the immigration laws if the officer has reason to believe (probable cause) that the particular person is guilty of such felony and is likely to escape before a warrant can be obtained. Felonies cognizable under the immigration laws include but are not limited to:

(1) bringing or attempting to bring a person to the United States at a place other than a designated port or place of entry [section 274(a)(1)(A) of the Act, 8 U.S.C. 1324(a)(1)(A)];

(2) bringing to, transporting within, or harboring of an alien who is not entitled to enter, reside, or remain in the United States knowingly or in reckless disregard of the fact that the alien has come to, entered, or remains in the United States in violation of law [section 274(a)(1)(B) & (C) of the Act, 8 U.S.C. 1324(a)(1)(B) and (C)];

(3) encouraging or inducing an alien to come to, enter, or reside in the United States, knowingly or in reckless disregard of the fact that such coming to, entry, or residence is, or will be, in violation of law [section 274(a)(1)(D) of the Act, 8 U.S.C. 1324(a)(1)(D)];

(4) illegal entry by an alien for the second or subsequent time [section 275(a) of the Act, 8 U.S.C. 1325(a)];

(5) marriage fraud [section 275(b) of the Act, 8 U.S.C. 1325(b)];

(6) reentry of an arrested and deported or excluded alien without the advance permission of the Attorney General to reapply for admission, unless the alien demonstrates he or she was not required to obtain advance permission [section 276 of the Act, 8 U.S.C. 1326];

(7) aiding or conspiring to aid a criminal or subversive alien to enter the United States

[section 277 of the Act, 8 U.S.C. 1327]; and

(8) importing or harboring aliens for any immoral purpose, such as prostitution [section 278 of the Act, 8 U.S.C. 1328].

Section 287(a)(5) of the Act has expanded the arrest authority of those INS officers designated by the Attorney General through regulation to have such authority. Pursuant to section 287(a)(5)(A) of the Act an INS officer may arrest for offenses against the United States committed in his or her presence. Under section 287(a)(5)(B) of the Act, an INS officer may arrest for any felony under the laws of the United States, if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing such a felony. To exercise authority under section 287(a)(5)(A) or (B) of the Act, an officer must be performing duties relating to the enforcement of the immigration laws at the time of the arrest and there must be a likelihood that the suspect will escape before a warrant can be obtained. An officer exercising authority pursuant to section 287(a)(5)(B) of the Act must be certified as having completed a designated training program. Exercise of authority under section 287(a)(5)(B) is dependent upon final promulgation of the Attorney General's implementing regulations.

Other felonies that fall within the jurisdiction of the INS include those described in sections 242(e) [8 U.S.C. 1252(e)] and 266(d) [8 U.S.C. 1306(d)] of the Act as well as certain felonies in Title 18 of the United States Code relating to false impersonation, nationality and citizenship, and passports and visas. General criminal offenses are found in Title 18 of the United States Code. However, other criminal offenses can be found in other titles. Other criminal offenses which immigration officers are likely to encounter may be found in Titles 19 and 21 of the United States Code, which relate to customs and narcotics violations. For a more complete and descriptive listing, consult The I&NS Investigator's Handbook, Appendix 5-5A and 5-5B (1985) or INS Border Patrol Handbook, Appendix 19-A (1985).

Rule 41 of the Federal Rules of Criminal Procedure sets forth the procedure for an arrest made pursuant to a criminal warrant. A person arrested without a warrant must be taken without unnecessary delay before a United States Magistrate. The judicial determination of probable cause should be held within 48 hours of the arrest, absent an emergency or extraordinary circumstances 30. For purposes of computation, the time includes weekends and holidays.

b. Use of Force to Effect an Arrest

An INS officer may use the amount of force reasonably necessary to effectuate an arrest or detention that he or she is lawfully authorized to effectuate. The officer is immune from liability provided the force was not excessive 31. In an excessive force case, the inquiry is an objective one under the fourth amendment: "Whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation 32." INS policy permits the use of non-deadly physical force only in self-defense, in defense of a fellow officer or third party, or when it is necessary to make an arrest or prevent an escape 33.

Deadly force should only be used in self-defense, in defense of another officer, or in the

defense of a third party when death or grievous bodily harm is threatened 34. Strict adherence to INS policy is required concerning any use of firearms. INS firearms policy provides that warning shots must not be fired 35.

Section 287(a)(5) of the Act provides that under regulations prescribed by the Attorney General, an officer or employee of the Service may carry firearms. The general arrest authority of this section becomes effective only when the Attorney General publishes final regulations which state the categories of officers of the Service who may use force, including deadly force, and the circumstances under which such force may be used 36. The designation of officers and employees who may carry a firearm and standards for use of firearms are currently set forth in the INS firearms policy.

c. Miranda Warnings Following Criminal Arrest

In Miranda v. Arizona 37, the Supreme Court held that prior to custodial interrogation for a criminal offense, an officer must provide the suspect certain warnings, or evidence procured as a result of that custodial interrogation will not be admissible in a later criminal case against the defendant. Specifically, a suspect must be advised that anything he or she says may be used against him or her and that he or she has the right to remain silent, to consult with a lawyer and to have a lawyer present during questioning, and, if indigent, to have counsel appointed. The purpose of these warnings, commonly termed Miranda warnings, is to protect the fifth amendment right against compulsory self-incrimination.

Miranda warnings are only required prior to interrogating an individual who is in custody 38. Whether a person is in custody for Miranda purposes depends on whether there is "a formal arrest or restraint on freedom of movement associated with a formal arrest." The key inquiry is whether a reasonable person in the suspect's position would believe he or she is under arrest 39. The fact that the person is a suspect or that the officer knows the person will not be allowed to depart, does not place the person "in custody" for purposes of Miranda 40.

Miranda warnings are applicable to the enforcement of the criminal laws. Therefore, while Miranda warnings do not apply in routine immigration inquiries, such warnings must be given when any person in custody is questioned regarding information which might be used against that person in a criminal prosecution 41. Similarly, a person in a local jail while under arrest on state charges must be given Miranda warnings where the INS officer asks questions that are "reasonably likely to elicit an incriminating response from the suspect." 42 If the officer has no prior reason to suspect that the questioning is likely to elicit an incriminating response for purposes of criminal prosecution or has no intention of prosecuting the suspect based upon the information obtained, Miranda warnings are not necessary.

Miranda warnings are not applicable to evidence that is non-testimonial. Non-testimonial evidence could be the giving of blood samples, appearances in a line-up, repeating a given phrase, or providing handwriting exemplars 43. Miranda warnings need not be given prior to searching for or seizing physical evidence.

Whenever Miranda warnings are given, they should be read verbatim from the Miranda card that is provided to each INS officer. This allows the INS officer to testify in court to the exact

language used at the time warnings were given. It is also permissible to have the suspect read the warnings. It is the duty of the officer to ensure that the suspect understands the warnings. In cases where the suspect does not understand English, the warnings must be given in a language understood by the suspect. If the officer is not able to do this orally, the assistance of a qualified interpreter may be necessary. If the suspect is allowed to read the warnings, whether in English or another language that he or she understands, the officer must be sure that the suspect has the ability to read the text of the warnings.

Once an individual has requested an attorney, the interrogation must cease immediately and the suspect may not be interrogated about the case until after conferring with counsel or the suspect otherwise initiates further conversation 44. In contrast, if the individual merely invokes his right to remain silent and does not request an attorney, the admissibility of statements obtained thereafter depends on whether the individual's right to cut off questioning was "scrupulously honored." 45 Generally, the "scrupulously honored" test requires officers to (1) immediately cease the interrogation, (2) resume questioning only after a significant passage of time and fresh set of Miranda warnings, and (3) either change the inquiry to another crime or wait for the suspect to initiate a conversation concerning the initial crime under investigation.

Whenever INS officers are unsure whether warnings should be provided they should check with their supervisors or legal counsel.

d. Detention of Material Witnesses in Criminal Cases

Pursuant to 18 U.S.C. 3144, a judge may order the arrest of a witness in a criminal proceeding if a party files an affidavit indicating that the witness's testimony is material and showing that it may be impracticable to secure the witness's presence by subpoena. Aliens and United States citizens who witness a criminal act may under appropriate circumstances be taken into custody by the INS and brought before a magistrate as soon as possible for designation as a material witness. Once the magistrate orders the material witnesses to remain in custody, such witnesses are in the custody of the U.S. Marshall. The INS may not continue to maintain custody of United States citizens who are designated material witnesses. The INS may under certain circumstances, and with the agreement of the U.S. Marshalls' Service, maintain custody of aliens designated as material witnesses while they are awaiting exclusion or deportation hearings.

Under the Bail Reform Act of 1984 46, a material witness is entitled to substantially the same treatment regarding conditions of release as a criminal defendant 47. The material witness must be released on personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the judicial officer determines that such a release on one's own recognizance or bond will not reasonably assure the required appearance of the material witness 48. If the latter determination is made, the judicial officer shall impose conditions for release as specified by statute 49. No material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition and further detention is not necessary to prevent a failure of justice 50. The government may seek review of an order of release and a person detained may file a motion for revocation or amendment of the order of detention. Such motions are to be decided promptly 51.

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The Supreme Court has held that prompt deportation of illegal alien witnesses is justified if the United States Attorney makes a good-faith determination that they possess no evidence favorable to the defendant in a criminal prosecution. However, sanctions may be imposed on the Government for deporting witnesses if the criminal defendant makes a plausible showing that the testimony of the deported witnesses would have been material and favorable to the defense in ways not merely cumulative to the testimony of available witnesses 52. This decision has the effect of limiting the Government, in most cases, to charge smugglers and transporters with bringing to or transporting a limited number of aliens and to hold as material witnesses only those aliens with whose transportation the defendant is charged.

Although not providing authority to detain, section 215 of the Act, 8 U.S.C. 1185, permits the Service to prevent departure of aliens under certain circumstances. A departure control order may be entered by the Service if it is determined that the departure of an alien is deemed prejudicial to interests of the United States. The regulations at 8 C.F.R.215.3 set forth the categories of aliens whose departure is deemed prejudicial to the interests of the United States.

The fourth amendment rule against unreasonable searches and seizures "protects people, not places." 53 It protects a person's reasonable expectation of privacy against government intrusion. The test of a legitimate expectation of privacy is: (1) whether the individual has a subjective expectation of privacy; and (2) whether that expectation is one which society is prepared to recognize as "reasonable." 54

A. USE OF SEARCH WARRANTS

The law favors the use of warrants to search or seize persons or property. Evidence, if seized without a warrant, may be inadmissable if a warrant could have been obtained prior to the seizure 55. The fourth amendment generally requires a warrant in order for a search to be deemed "reasonable." Therefore, absent some exception to the warrant requirement, warrantless searches and seizures are "unreasonable." Moreover, warrants may only be issued in certain prescribed ways.

Warrant requirements vary depending on whether the suspected violation is civil or criminal. The warrant requirements for criminal violations are governed by Rule 41 of the Federal Rules of Criminal Procedure. The warrant requirements for civil or administrative violations are based upon the Act and judicial interpretations.

1. Rule 41 Warrants: Criminal Violations

The fourth amendment precludes issuance of a warrant except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Rule 41(c) of the Federal Rules of Criminal Procedure states that a warrant may issue upon an affidavit sworn to before a federal magistrate, if the magistrate is satisfied that the affidavit reflects probable cause. The affidavit generally must be in writing. In an emergency, a magistrate may issue a warrant based upon sworn oral testimony communicated by telephone.

When seeking a telephonic warrant, the officer, in conjunction with the appropriate Special Assistant United States Attorney or Assistant United States Attorney, should be prepared to show that: (1) he or she could not reach the magistrate in his or her office during regular business hours; (2) the officer who seeks to make the search is a significant distance away from the magistrate; (3) because of the particular factual situation it would be unreasonable for a substitute officer who is near the magistrate to prepare a written affidavit to the magistrate in lieu of the telephonic application; and (4) the need for a search is such that absent the telephonic procedure a warrant could not be obtained and there is a significant risk that evidence would be destroyed 56.

Probable cause exists where "the facts and circumstances within their [the officers'] knowledge, and of which they [have] reasonably trustworthy information . . . [are] sufficient in themselves to warrant a man of reasonable caution in the belief that . . . a crime has been or is being committed, and that property subject to seizure can be found at the place or on the person to be searched." 57 Rule 41 also permits issuance of a warrant to search for and seize "any person for whose arrest there is probable cause, or who is unlawfully restrained."

An affidavit that alleges facts based upon the personal observation of a law enforcement officer is generally sufficient to establish probable cause and will support the issuance of a warrant. However, personal knowledge is not essential and an affidavit may be based upon hearsay information provided to the officer by a confidential informant 58.

If the affidavit is based upon hearsay, the affiant must identify the underlying circumstances, including the "veracity" and "basis of knowledge" of persons supplying the hearsay information so as to permit a magistrate to make a practical, common sense decision regarding the presence of probable cause 59. Where the hearsay derives from information provided by an informant, the affidavit must contain evidence bearing on the veracity of the informant 60. An informant's veracity or trustworthiness may be established in several ways. If the informant has previously provided accurate information, the information provided is an admission against penal interest, or there is no motive to falsify and there is independent police corroboration of the details, the information may be considered reliable and trustworthy 61.

2. Blackie's and Barlow's Warrants: Civil/Administrative Violations

In those enforcement operations where no criminal prosecution is contemplated, it is INS policy to use civil entry warrants. An administrative warrant may not be used as a pretext to gather evidence for a criminal prosecution 62. The use of civil warrants was sanctioned in Blackie's House of Beef, Inc. v. Castillo 63, International Molders v. Nelson 64, and Marshall v. Barlow's, Inc. 65

a. Blackie's Warrants

In Blackie's, officers obtained a warrant to enter a commercial establishment in order to search for persons believed to be aliens in the United States without legal authority 66. The warrant did not mention Rule 41; rather, the authority to search was premised upon sections 103(a) of the Act [8 U.S.C. 1103(a)] and 287 of the Act [8 U.S.C. 1357]. Further, the warrant did not contain any "particularized description" of the individual aliens sought. In upholding the entry warrant as reasonable within the fourth amendment, the court held that the warrant need not specifically name the aliens so long as the warrant and accompanying affidavits narrowed down the field of potentially vulnerable persons to those whom officers had probable cause to believe were illegal aliens.

For a magistrate to issue a Blackie's type warrant, the affidavit must demonstrate probable cause that illegal aliens will be found on the premises to be entered. However, the particularized description requirement is relaxed with respect to what is sought. The warrant must specify the places to be entered and the time and scope of the inspection. The affidavits should contain sufficient information to permit a magistrate to find probable cause to believe

that aliens who are illegally in the United States will be found on the premises.

Officers may properly use Blackie's warrants to gain entry onto premises for the purpose of searching for unnamed illegal aliens who are believed to be present on the premises. However, the federal district court in the Northern District of Illinois has suggested that Blackie's warrants may not be used for residential premises 67.

b. Barlow's Warrants

A Barlow's warrant need not be based upon specific evidence of an existing violation but may be issued on the basis of a general administrative plan for enforcement based upon specific criteria that explain how a business falls into the general plan 68. A Barlow's warrant may be issued upon a showing that reasonable legislative or administrative standards for conducting an inspection are satisfied with respect to the establishment to be searched 69.

In order to obtain a Barlow's warrant, the agency must show that the warrant is based upon a general inspection plan. The first requirement of a general plan is identification of the source information. The source data may be gathered from neutral sources such as surveys, studies, expert opinion, and statistics 70. The agency must also show that the general plan is consistent with the agency's mission 71. The third and fourth requirements are identification of the material used and the manner of its use in making a specific selection. The agency must show that it has a plan with specific criteria, that the criteria are neutral as to this specific employer, that the criteria came from a source other than the investigator, and that there is an adequate explanation as to how a particular employer falls within the plan 72. The application for a warrant must show that: (1) the plan was derived from a neutral source that identified the group of businesses to be inspected under the plan; (2) the plan is consistent with the agency's mission; (3) the specific criteria used in the plan and the fact that they are neutral to the business to be inspected; and (4) the particular business falls within the plan. A Barlow's warrant may be useful in the investigation of employer sanctions cases under section 274A of the Act.

3. Execution of the Search Warrant

The manner of execution of a criminal search warrant is specified in Rule 41 of the Federal Rules of Criminal Procedure. Among other requirements, Rule 41 specifies the period for which the warrant is valid, the time of day it may be executed, the manner in which the executing officers may enter the premises to be searched, and the requirements regarding the property seized during the search.

Pursuant to 18 U.S.C. 3105 the warrant may be executed by: (1) the person to whom the warrant is directed; (2) any officer authorized by law to execute a search warrant; or (3) any other person aiding someone authorized to execute a warrant, who is present and acting in execution of the warrant. Under 18 U.S.C. 3l05, unnamed federal agents may aid other federal agents who are named in the warrant. State officers may also assist federal agents in executing a federal warrant.

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Under I8 U.S.C. 3I09, officers executing a search warrant are required to knock and announce their authority and purpose upon arrival at the place to be searched. If entry is refused, the officers may then use reasonable force to obtain entry.

In those circumstances where INS officers are asked to assist in the execution of a warrant obtained by state or local authorities, the INS officers must inquire about the nature and scope of that warrant to ensure that they are acting consistently with its authorization and limitations 73.

B. WARRANTLESS SEARCHES AND SEIZURES

Warrantless searches and seizures are per se unreasonable under the fourth amendment unless they fall within a recognized exception.

1. Search Incident to Lawful Arrest

Incident to a lawful arrest, the arresting officer may search the arrestee's person and the area "within his immediate control" -- meaning the area from within which the arrestee might gain possession of a weapon or destructible evidence 74. A search incident to arrest is an exception to the warrant requirement when four factors are present: (1) the arresting officer must have the authority to make a valid arrest; (2) the arrest must be based on probable cause; (3) the arrest must be made in good faith and not as a pretext to justify the search; and (4) the search must be contemporaneous with the arrest. There is no requirement that the facts of the particular case indicate a likelihood of finding either evidence or weapons 75. The purpose of the search is to protect the arresting officers and to prevent the destruction of evidence 76.

a. Search of Vehicle Incident to Arrest

When an occupant of a vehicle is arrested, the officer may, incident to this arrest, search the entire passenger compartment, including the glove compartment, as well as closed containers located therein 77. See also Inventory Searches of Seized Vehicles and Container Searches at III-13, infra. The officers may also conduct a limited protected search of a vehicle when he or she has a reasonable belief that the motorist is dangerous and could grab a weapon inside the vehicle, even if the stop is only based upon reasonable suspicion. The scope of the search is limited to the location where a weapon could be accessible to the detainee 78.

b. Search of Premises Incident to Arrest

If a person is arrested in a dwelling, only that area within the reach of an arrestee may ordinarily be searched pursuant to a lawful arrest without a search warrant 79. However, if the officer making the arrest has a reasonable suspicion based upon specific articulable facts that a dwelling where the arrest occurred harbors an individual who presents a danger to those on the scene, a limited protective sweep of the area may be conducted 80. The sweep in these circumstances extends only to a cursory inspection of those spaces where a person might be found; it does not include an in-depth search of the area.

If the person is arrested outside or near a dwelling, the dwelling may not constitutionally be searched except with consent or in exigent circumstances, as described below 81.

2. Consent Searches

Officers may conduct a search of premises or effects without a warrant and without probable cause if the person in control of the premises or effects gives his or her voluntary consent. Whether consent is voluntary depends upon the totality of the circumstances, including "evidence of minimal schooling, low intelligence, and the lack of effective warnings to a person of his rights." 82 Consent is involuntary when it is the product of coercion or threat, express or implied 83. Other factors affecting voluntariness include: an officer's claim or show of authority 84, prior illegal government action, mental or emotional state of the person 85, cooperation or lack thereof 86, and custody 87. Officers need not advise the subject that consent may be refused, although whether such an advisory is given is a factor in determining the voluntariness of the consent. Mere failure to object to a search or otherwise resist is not consent 88. The burden is on the government to demonstrate that consent was voluntary. Miranda warnings are inapplicable. However, consent may not be obtained by trick or coercion 89.

Consent to search may be given only by the person with the primary right to occupy the premises or a third party who possesses common authority over, or other sufficient relationship to, the premises or effect sought to be inspected 90. A warrantless search will also be upheld when based upon the consent of a third party whom the police, at the time of entry, reasonably believe to possess common authority over the premises, but who in fact does not 91. Generally, courts uphold third-party consent to search a home given by a spouse, a live-in paramour, or a parent. In contrast, a landlord or hotel owner may not give valid consent to search the rented premises.

The duration and scope of a person's consent is measured by a standard of objective reasonableness. In other words, what would the typical reasonable person have understood by the exchange with the officer? 92 If an officer requests permission to search a car for drugs, it is reasonable for an officer to consider a suspect's general consent to search the vehicle to include unlocked containers within the car 93. A person may revoke his or her consent to search at any time.

3. Exigent Circumstances

Officers may make a warrantless search based upon probable cause when some exigency or compelling urgency requires immediate action in order to protect law enforcement personnel or the public, or to prevent the destruction of contraband or evidence 94. Factors which the court will consider in determining exigency to justify a warrantless search include: (1) the gravity or violent nature of the crime; (2) whether the suspect is believed to be armed; (3) a clear showing of probable cause to believe that the suspect committed the offense; (4) likelihood that the suspect will escape absent swift action; (5) level of force utilized in effecting the entry; (6) reason to believe that the suspect is on the premises; and (7) insufficient time to obtain even a telephonic warrant 95.

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Warrantless entries and searches are also permitted: (1) when officers reasonably believe that someone is in immediate need of assistance; (2) to protect or to preserve life; or (3) to avoid serious injury. At such times officers may seize any evidence that is in plain view 96.

Warrantless entry and seizure of contraband or evidence is permissible if the officers believe that the evidence is probably being destroyed.

a. Hot Pursuit

An officer may enter private property in hot pursuit of a suspect who is fleeing to avoid arrest 97. Upon entering the premises in hot pursuit, officers may briefly conduct a protective sweep of the premises to ensure their safety from other persons or weapons that may be hidden within 98. Officers may enter upon private lands to make a warrantless arrest, provided the arrest is based upon probable cause and the person is in plain view 99. A suspect may not defeat an otherwise proper arrest by retreating to a private place 100.

Hot pursuit does have limitations. A claim of hot pursuit will not be sustained where there is no immediate or continuous pursuit of a suspect from the scene of a crime, or where the alleged offense is not a serious crime 101.

b. Arrest in a Public Place

A law enforcement officer may enter a business establishment or a public place on the same basis as the public who is invited to transact business 102. Any area where there is no expectation of privacy is considered a public place 103. This includes observations made by INS officers in public areas which are not protected by the fourth amendment, since there is no legitimate expectation of privacy in public areas such as parks, roads, streets, alleys, private premises open to the public, and that portion of commercial establishments, lobbies or hallways of apartment houses that are open to the public 104. Officers may enter onto farms or other outdoor agricultural operations that extend invitations to enter to the general public, such as "pick it yourself" orchards.

4. Detention Facility Searches

Fourth amendment protection is diminished in the area of supervisory searches of prisoners by governmental personnel.

a. Searches of Detainee's Cell

The Supreme Court has upheld the practice of conducting unannounced searches of prisoner cells at irregular intervals 105. Prisoners' privacy rights during incarceration do not outweigh the need of the prison authorities to ensure security within penal institutions 106. The Supreme Court has ruled that detainees have no right to observe a search of their cells 107.

b. Mail Searches

Searches of incoming and outgoing mail at penal institutions, while within the fourth

amendment, more frequently have been addressed on first amendment grounds 108. Correspondence to and from prisoners is divided into two categories, privileged and non-privileged. Privileged mail includes mail from attorneys, courts, governmental officials, and in some instances, the media 109. Privileged incoming mail may only be inspected in the presence of the inmate addressee, and only for contraband. The mail may not be read and/or censored. Privileged outgoing mail may not be opened, inspected, or censored 110. This is subject to modification if the authorities can establish probable cause for search and seizure of privileged mail 111.

Non-privileged mail may be inspected for contraband, but the intrusion should be minimal to protect the first amendment rights of the prisoner 112. If the penal authorities elect to censor non-privileged mail, they must give appropriate notice to the intended recipient and a reasonable opportunity to challenge the decision, and they must refer complaints to a prison official other than the person who originally censored the correspondence 113.

c. Searches of Detainees

The Supreme Court has upheld routine strip searches given the reasonable security concerns within penal institutions 114. Among the factors which the Court considered were the scope of the intrusion and the manner and the place in which the search was conducted. Before undertaking any search, consideration should be given to the reason for the search and the relationship to the security concerns of the institution.

In the Western Region, pursuant to Flores v. Meese 115, officers may not strip search juvenile alien detainees absent probable cause for the search.

5. Border Searches

Border searches are a recognized exception to the fourth amendment's general principle that a warrant be obtained prior to conducting the search. Border searches are reasonable without a warrant and without probable cause 116. This exception also applies to searches at the functional equivalent of the border.

a. Searches at International Borders

The interrogation and search of individuals and their effects at the border is inherently reasonable for purposes of the fourth amendment 117. INS officers may interrogate individuals to determine admissibility without probable cause or "reasonable suspicion." 118 INS officers may interrogate all persons seeking admission to the United States concerning any basis for which the individual may be excludable 119. Routine searches of persons and things may be made upon their entry into the country without a search warrant or probable cause 120. Routine searches of persons and things likewise may be made upon their exit from the country 121. However, a warrantless border search is valid only if conducted by officials specifically authorized to conduct such searches 122.

These border searches may be made when entry is made by land from the neighboring countries of Mexico and Canada, at the place where a ship docks in this country after having

been to a foreign port, and at any airport in the country where international flights land 123. Officers may search automobiles, baggage, and goods entering the country. Any person seeking to enter the country, despite the brevity of absence or intended period of stay in the United States, may be required to submit to a search of his or her outer clothing, purse, wallet, or pockets. However, border searches are subject to constitutional limitations. Searches of persons, particularly body cavity searches and similar intrusive procedures, require some level of suspicion under the fourth amendment 124. The border search authority extends to all persons or vehicles attempting to enter or seen entering the United States. The authority has been extended to permit searches where an automobile was kept in constant surveillance for a period of four hours and the search was conducted at a distance of twenty-five miles from the border 125, and where a vehicle was seen coming from a "known river crossing" some 300 yards from the Rio Grande, since the vehicle was still within the "border nexus." 126

b. Extended Border Search

An "extended border search" takes place after a person, vehicle, mail, or some other property has crossed the border or cleared a prior checkpoint, or a significant amount of time has elapsed since the object first arrived in the United States. An extended border search must be justified by "reasonable suspicion" that the subject of the search was involved in criminal activity 127. In contrast, a search conducted at the border or its functional equivalent requires no suspicion and a roving patrol search requires probable cause. The determination of whether a valid extended border search has been undertaken is based on a multiplicity of factors. Generally, an extended border search requires: (1) reasonable suspicion of illegality; (2) reasonable certainty that the vehicle/person crossed the border; and (3) reasonable certainty that the condition of the vehicle/person remained unchanged since the border was crossed, often established through constant surveillance or tracking 128. Courts have upheld border searches conducted thirty-six hours after the vessel entered Los Angeles harbor 129, seven hours after border crossing and 105 miles from the border, 130 and where radar tracked a plane from Mexico entering into the United States 131.

c. Functional Equivalent

The broad authority which exists at the international border also extends to areas found to be the "functional equivalent" of the border. This principle is based on common sense and geography when an interior location is one which persons crossing the border must pass to enter the domestic traffic flow. Generally, a functional equivalent of the border is a point marking the intersection of two or more roads extending from the border without any major intervening crossroad, or an airport which is the destination of a nonstop flight from outside the United States.

Three factors are used to determine whether a location other than the actual border is a "functional equivalent": (1) reasonable certainty that a border crossing has occurred; (2) lack of time or opportunity for the object to have changed materially since the crossing; and (3) execution of the search at the earliest practical point after the actual crossing. For example, customs agents conducted surveillance in the dock area where passengers leave cruise ships and observed an individual leaving the ship and entering a vehicle. The vehicle departed the area and was stopped some one and one-half mile from the docks, although still within the port

area. A search at the gangplank area would have required the agents to disclose their routine hiding places at the port. Since the car had not left the port area when it was stopped and the stop was effected at the earliest practical time, it fell within the "functional equivalent" exception 132.

The functional equivalent of the border may be the mouth of a canyon, the confluence of trails or rivers, or a fixed checkpoint. Not all checkpoints are "functional equivalents." The key factor for consideration in determining whether the location is the "functional equivalent" is whether the "person or item had entered into [the] country from outside." 133 A "functional equivalent" will not be found where there is a mixture of domestic traffic with the traffic normally coming from the international border or where a major metropolitan area is located between the proposed location and the border. 134

In the Fifth Circuit, which includes Texas, in order for a checkpoint to merit the designation of "border equivalent checkpoint," the government must demonstrate with "reasonable certainty" that the traffic passing through the checkpoint is "international in character" and the checkpoint intercepts "no more than a negligible number of domestic travelers."135 Officers should be familiar with any "functional equivalent" within their jurisdiction 136. The "functional equivalent" caveat is an exception to the general rules applicable to arrests, searches, and seizures that do not occur at the border. If there is any question whether the particular area is a "functional equivalent," an officer should apply the reasonable suspicion and probable cause standards for searches and seizures that are applicable to interior locations.

d. Entry of Lands Within 25 Miles of Border

Under section 287(a)(3) of the Act, immigration officers may enter private lands, but not dwellings, within 25 miles from any external boundary of the United States for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States. The regulations define the phrase "patrolling the border to prevent the illegal entry of aliens into the United States" as "conducting such activities as are customary, or reasonable and necessary, to prevent the illegal entry of aliens into the United States." 8 C.F.R. 287.1(f).

INS Operations Instructions (OIs) require that whenever possible immigration officers shall inform the owner or occupant of private lands that they propose to avail themselves of their power of access to those lands. If a direct challenge is made of the officer's authority, the matter should immediately be brought to the attention of the officer's supervisor. In most cases consent will be given in advance for extended periods; if not, and after all methods of persuasion have failed, including efforts by personal interview and the placing of the landholder on notice of the law by registered mail, officers may, if absolutely necessary, gain access to areas within the 25 mile area by the most expeditious means. This is an extreme measure and is to be resorted to only on the direction of a supervisory officer after careful consideration. If damaged, fences and gates should be repaired immediately and precautions taken to avoid further injury to the property 137.

6. Checkpoints

The Border Patrol conducts two types of inland traffic-checking operations: checkpoints and

roving patrols. Border Patrol agents may lawfully stop motorists at checkpoints located away from the border to determine the citizenship of the vehicle's occupants. In United States v. Martinez-Fuerte, the Supreme Court established constitutional guidelines for checkpoint stops and searches. The inquiry must be brief and limited to the immigration status of the occupants of the vehicle and the only permissible search is a "plain view" inspection to ascertain whether there are any concealed illegal aliens 138. Absent consent, a more in-depth search of the occupant or the vehicle requires probable cause 139.

Probable cause can be developed by the agent's questioning of the occupants and observation of their appearance 140. Probable cause concerning the existence of contraband may also be developed through observation of material in plain view of the agent. Agents' observations which have been held to support searches include situations where an agent observed marijuana debris on the floor of a vehicle and smelled the distinctive odor of marijuana 141. Observation of marijuana seeds on the floor and nervousness of the driver were found sufficient to sustain a search for contraband 142, and the Fifth Circuit has held that the aroma of marijuana alone was sufficient to justify a Border Patrol agent's search of a vehicle 143.

Where agents have probable cause to search at a checkpoint, no warrant need be obtained because, as discussed below, a vehicle is a traditional exception to the warrant requirement.

In Martinez-Fuerte, the Supreme Court distinguished a checkpoint from a "roving patrol." At a checkpoint, the situation is controlled and causes the individual traveller less anxiety. Roving patrols, on the other hand, often operate at night and on seldom-traveled roads, presenting the possibility of frightening motorists. In validating the operation at the San Clemente checkpoint, the Court considered the government's need to control the influx of illegal aliens, the characteristics of the operation, including the use of warning lights and signs, the minimal nature of the intrusion, and the routine and regularized manner in which stops were effected. The Court found that this type of routine stop did not require reasonable suspicion 144.

In order to ensure that Border Patrol checkpoints continue to withstand challenges, all checkpoints should be operated in accordance with the instructions set forth in the Border Patrol Handbook 145. Except for the absence of permanence, INS policy requires that temporary checkpoints should be operated in a manner as close as possible to permanent checkpoints to avoid legal difficulties.

7. Vehicle Stops and Searches

In United States v. Brignoni-Ponce 146, the Supreme Court held that an INS officer on roving patrol may stop a car briefly and investigate suspicious circumstances where the officer has a reasonable suspicion that a particular vehicle contains aliens who may be illegally in the United States 147. Though not exclusive, circumstances which have been acknowledged to be pertinent in justifying vehicle stops include:

> (1) the characteristics of the area in which a vehicle is encountered, such as its proximity to the border, the usual patterns of traffic on the particular road, previous experience with alien traffic, and information about recent illegal border crossings; 148

(2) the driver's or passenger's behavior, including erratic driving or obvious attempts to evade officers; 149

(3) aspects of the vehicle, e.g., station wagons with large compartments for fold- down seats or spare tires are frequently used for transporting concealed aliens; the vehicle may appear to be heavily loaded or to have an extraordinary number of passengers; or the officers may observe persons trying to hide; 150

(4) appearance of the occupants, including whether their mode of dress and/or haircut appear foreign;

(5) information from outside sources such as reports of illegal border crossings, police reports, or informant information; and

(6) an officer's experience and training, including previous experience with alien vehicle traffic and the inferences and deductions of a trained officer 151.

The circumstances which lead to the stop may appear innocent to the untrained observer 152. However, these circumstances must be considered in totality and not in isolation 153.

Once the vehicle is lawfully stopped, the officer may question the driver and occupants concerning their citizenship and immigration status and ask for an explanation of the suspicious circumstances. In addition, when the vehicle is stopped, the officer may also order the occupants to exit the vehicle for questioning 154, request consent to search the vehicle 155, and examine the exterior and any portion of the interior of the vehicle which is open to view. Any further arrest or search must be based on consent or probable cause in order to comply with the fourth amendment.

Further detention of vehicles may be justified based upon a minimal suspicion of narcotics trafficking. Courts have found that a brief detention for the purpose of utilizing a narcotics dog to sniff the exterior of a vehicle was reasonable under the fourth amendment 156.

INS officers on roving patrol may not stop a vehicle unless they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably support the suspicion that the vehicle contains aliens who may be illegally in the country 157.

8. Inventory Searches of Seized Vehicles

Warrantless searches of vehicles for the purpose of making an inventory of the personal effects of the contents of the vehicle after a suspect has been taken into custody are reasonable under the fourth amendment 158. "Inventory" searches of properly seized vehicles are reasonable and do not require probable cause where the purpose is not investigative, but rather: (1) to protect the police or the public from potential damages; (2) to protect the police against claims of lost property; or (3) to protect the owner's property while it is in police custody. The inventory search cannot be used as a subterfuge for a criminal investigative search 159.

INSERTS

An inventory search not made on-the-scene, but rather, for example, after the vehicle has been moved to an impoundment lot, is also reasonable under the fourth amendment 160. Where the law enforcement agency maintains a standard practice of conducting an "inventory" search, such a search is reasonable for fourth amendment purposes 161.

9. Container Searches

The general rule is that search of a closed container requires consent or a warrant based upon probable cause 162. Under the vehicle exception, law enforcement officers who have lawfully stopped an automobile and who have probable cause to believe that contraband is concealed either specifically within a container or somewhere else within the car may conduct a warrantless search of any area within the vehicle that may conceal contraband 163. This area includes closed containers located within the car as well as areas of the car that may require permanent damage to reach, such as slashing the upholstery to reveal the contraband 164. The Supreme Court has recently reversed two decisions which held that officers could not conduct a warrantless search of a closed container in a vehicle unless they had probable cause to search the entire car 165. In California v. Acevedo, the Court held that law enforcement officers do not need to obtain a warrant in order to search a container in a car "simply because they lack probable cause to search the entire car." 166 In such cases, the scope of the search is limited to any container which could reasonably be believed to contain the contraband. Probable cause to believe that undocumented aliens are being transported in a van will not justify warrantless search of a suitcase. However, the suitcase may be searched under an "inventory search" if appropriate 167. If officers have probable cause to believe an individual is transporting drugs or other contraband in the vehicle or in a container within the vehicle, the officers may conduct a warrantless search of every part of the vehicle and its contents, including all containers and packages that may conceal the object of the search 168. The object of the search defines the scope of the search 169.

10. Other Exceptions to the Warrant Requirement

A warrant is not required before a search or seizure in the following additional circumstances.

a. Evidence in Plain View

When a police or INS officer while lawfully present uses one or more of his or her senses to make a detection, that detection is not a search within the fourth amendment. If an item is immediately recognized as seizable evidence or contraband without the necessity of picking up or touching the object to examine it, an officer who is lawfully present may seize the item without a warrant 170. For example, an officer may gain a lawful vantage point while executing a warrant to search a given area for specified object, and in the course of the search the officer may observe in plain view some other article of incriminating character; or while in hot pursuit of a fleeing suspect an officer may observe contraband; or an officer in a public place or open area or standing on a sidewalk may smell the manufacturing of LSD, overhear the plotting of a criminal conspiracy, or see marijuana plants growing in a backyard 171.

In the "plain smell" context no search occurs when an officer, lawfully present at a certain

place, detects odors emanating from private premises, from a vehicle, or from some personal effects such as luggage 172. The courts divide on whether the plain smell doctrine permits an officer to lightly squeeze luggage in order to detect the odor within the luggage 173.

A case still comes within the plain view/senses doctrine when officers' observations/detections are aided by flashlights, binoculars, cameras, or other common enhancement devices 174. In determining whether a case fits within the plain senses doctrine, the court will consider the degree of sophistication of the equipment and the extent to which the incriminating objects or actions were out of the line of normal sight from contiguous areas where passersby or others might have made the observation 175. For example, wiretapping invades privacy beyond that permitted under the plain hearing doctrine and requires a warrant.

Plain view allows an officer to view the contraband or incriminating article. To gain access to and seize that article, there must be either a warrant, consent, exigent circumstances, or some other exception to the warrant requirement 176. If an object is observed on the person of an individual, the seizure of such article first requires an officer to either obtain a warrant, seize the article pursuant to a search incident to arrest, or justify the warrantless seizure under exigent circumstances 177.

b. Open Fields

Open fields and any unoccupied or undeveloped area outside a dwelling or its curtilage may be searched without a warrant under the "open fields" exception to the warrant rule 178. No reasonable privacy expectation exists in "open fields" even if surrounded by a fence. A fenced area is not significant unless it constitutes a "curtilage."179 The area constituting curtilage depends on: (1) the proximity of the area to the home, (2) whether the area is enclosed in the same fence that surrounds the home, (3) what type of activity the area is used for, and (4) the steps taken to guard the area from observation 180. "Trespass" by law enforcement officers is permissible onto "open fields" when the performance of duty so requires 181.

However, in order to enter onto the premises of a farm or other outdoor agricultural operation for the purpose of questioning persons believed to be aliens regarding their right to be or remain in the United States, the officer must first obtain either the consent of the owner or his or her agent or obtain a properly executed warrant 182. The warrant exceptions for exigent circumstances are also applicable in these instances 183.

This limitation on the "open field" doctrine does not apply when the officer is entering onto the land for a purpose other than questioning persons believed to be aliens. Thus, the officer may enter land to obtain consent or for any other permissible purpose. An officer may conduct surveillance of activities occurring on farms or other outdoor agricultural operations.

c. Canine "Sniffs"

Generally, a canine sniff of an inanimate object such as luggage in a public place does not constitute a fourth amendment search or seizure 184. In evaluating the propriety of a canine sniff as a law enforcement tool, the courts have balanced the intrusiveness of the sniff against the reasonableness of any privacy interest in the area to be sniffed 185. For example, canines

may be used to sniff the exterior of vehicles during immigration inspection at checkpoints or ports of entry 186. The use of canines to sniff the outside of a vehicle in a public place is not a fourth amendment search 187. Courts have upheld the legality of canine sniffs, undertaken without reasonable suspicion of the exterior of luggage in possession of a common carrier or the outside of lockers in a public transportation terminal 188.

Canines may not be used in areas where an individual has a heightened expectation of privacy such as the body, clothing worn by a person, or personal property while it is being worn by or held in the physical possession of a person, absent reasonable suspicion or an applicable exception to the warrant requirement 189. Similarly, the use of canines to sniff dwellings or the area immediately surrounding a dwelling ("curtilage") requires a warrant, or a recognized exception to the warrant requirement 190. Any seizure or detention of an object for exposure to a sniff by a canine must be supported by an officer's reasonable suspicion that the object is or contains contraband and such detention must be brief in length, during which time the officers must diligently pursue the investigation 191.

A positive alert by a properly trained canine generally constitutes sufficient probable cause to support a search or seizure 192. However, unless the situation falls within a recognized warrant exception, the officer must still obtain a warrant before conducting a search or making an arrest 193.

C. ADMINISTRATIVE SUBPOENAS

Certain INS officers are authorized to issue administrative subpoenas pursuant to section 235(a) of the Act 194.

Pursuant to 8 C.F.R.287.4(a), certain INS officers may issue a subpoena requiring the production of records and evidence for use in criminal or civil investigations or, if prior to the commencement of proceedings, for use in proceedings. If proceedings have commenced, a subpoena must be issued by an immigration judge. Pursuant to 8 C.F.R.287.4(d), the INS may seek the aid of a United States District Court if a witness refuses to honor the administrative subpoena.

In addition to an officer's authority to issue subpoenas under section 235(a) of the Act, it is also possible for officers, once a complaint has been filed, to seek the issuance of subpoenas from administrative law judges under the provisions of sections 274A(e)(2) [8 U.S.C. 1324a(e)(2)] and 274C(d) [8 U.S.C. 1324c(d)] of the Act. Issuance of these subpoenas for employer sanctions and civil document fraud cases should be discussed with the District Counsel.

The fourth amendment requires that administrative subpoenas be sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome 195.

M-69: CHAPTER IV - SEIZURE AND FORFEITURE OF CONVEYANCE

Pursuant to section 274(b) of the Act, 8 U.S.C. 1324(b), any conveyance, including vehicles, vessels, aircraft, and any appurtenances connected with such conveyance, may be seized by officers having probable cause to believe that the conveyance has been used in violation of section 274(a) of the Act. Such conveyances may be seized without a warrant if circumstances exist where a warrant is not constitutionally required. For example, where the conveyance is mobile and likely to be unavailable for later execution of a warrant, a warrant is not required.

The officer's report should articulate facts to support each element of the particular criminal offense which forms the basis for the seizure. Section 274(a) of the Act describes five separate criminal offenses including bringing to, bringing into, transporting within, harboring, and encouraging entry of illegal aliens, and any attempts to commit these violations.

* Section 274(a)(1)(A) prohibits bringing a person known to be an alien to the United States at a place other than a designated port of entry or place designated by the Commissioner.

* Section 274(a)(1)(B) prohibits transportation within the United States of an alien either knowingly or in reckless disregard of the fact that the alien has illegally come to, entered, or remains in the United States, where such transportation furthers the alien's illegally coming to, entering, or remaining in the United States.

* Section 274(a)(1)(C) bars concealing, harboring, or shielding of an alien either knowingly or in reckless disregard of the fact that the alien has illegally come to, entered, or remains in the United States.

* Section 274(a)(1)(D) proscribes encouraging or inducing an alien to come to, enter, or reside in the United States either knowingly or in reckless disregard of the fact that such coming to, entry, or residence is or will be unlawful.

* Section 274(a)(2) makes it illegal to bring an alien to the United States either knowingly or in reckless disregard of the fact that the alien has not received prior official authorization to come to, enter or reside in the United States.

Since each of these offenses requires knowledge of either alienage or illegal status on the part of someone other than the transported alien, the mere presence of an illegal alien in a conveyance does not by itself provide the necessary probable cause for a seizure.

Following a lawful seizure of a conveyance and after due notice of seizure to the registered owner and any known lienholder, any person having a legally cognizable interest in a seized

conveyance may present evidence to the INS to establish either: (1) that the conveyance was not "seizable;" i.e., there was no probable cause to believe a violation of section 274 of the Act occurred; (2) that the conveyance is not "forfeitable"; i.e., that title to the seized conveyance may not pass to the United States, since the owner was not involved in or privy to the smuggling; or (3) though title to the vehicle is forfeited to the United States, the vehicle should be returned to the interested party based upon mitigating circumstances or because the interested party was not directly involved in or privy to the smuggling. Accordingly, a forfeited conveyance may be "remitted" to a bank, lienholder, or registered owner who pays seizure costs and promises not to return the conveyance to any named culpable party. Similarly, a forfeiture may be "mitigated" in favor of a culpable party to whom the INS returns the vehicle in exchange for payment of a monetary fine and seizure costs.

In addition, an interested party may seek judicial review of any seizure under section 274 of the Act by timely filing a claim and a bond in accordance with 8 C.F.R.274.11. The case is then transmitted to the U.S. Attorney for institution of judicial forfeiture proceedings in U.S. District Court naming the conveyance as the defendant. All cases in which the appraised value of the conveyance is greater than $100,000.00 must be so referred to the U.S. Attorney for judicial forfeiture proceedings, pursuant to 8 C.F.R.274.12.

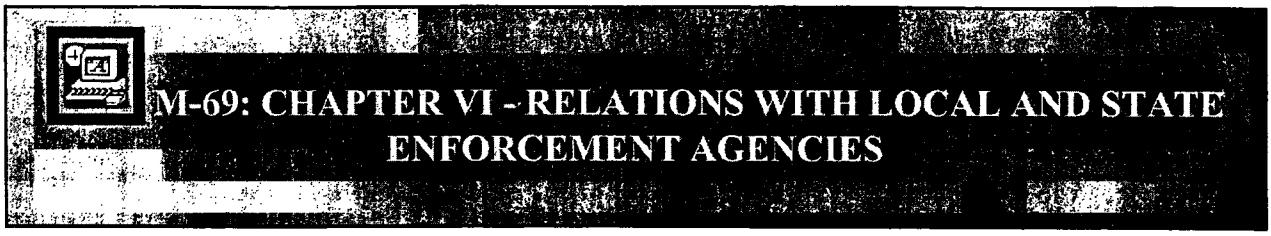
For further information, please consult the INS Asset Forfeiture Office Manual on Conveyance Seizures.

M-69: CHAPTER V - INS UNDERCOVER OPERATIONS

The Attorney General issued Guidelines on INS Undercover Operations, effective March 19, 1984. An "undercover operation" is defined as "any investigative operation in which an undercover employee or cooperating private individual is used." All INS undercover operations fall into one of three categories under the Guidelines: (1) those undercover operations which must be authorized by the INS Commissioner with the concurrence of the Assistant Attorney General for the Criminal Division; (2) those which must be authorized by the appropriate Headquarters program; 196 and (3) those which must be authorized by the appropriate District Director or Chief Patrol Agent. The Guidelines also authorize the District Director or Chief Patrol Agent to approve undercover operations in the first two categories in emergency situations involving protection of life or substantial property, to apprehend or identify a fleeing offender, or to prevent the destruction of evidence or other grave harm.

In general, the greater the risk of harm or intrusiveness, the higher the approval level required. The Guidelines require periodic consultation by INS personnel with the U.S. Attorney or Strike Force Chief during the course of an undercover operation, no matter who has approved its implementation. The Guidelines also create an Undercover Operations Review Committee comprised of INS personnel and Criminal Division attorneys to review and make determinations on operations requiring Headquarters approval.

The Guidelines describe the manner in which application should be made for approval of an undercover operation. The guidelines are being revised. If you have any questions regarding the applicability of the guidelines, contact a supervisor or legal counsel.



M-69: CHAPTER VI - RELATIONS WITH LOCAL AND STATE ENFORCEMENT AGENCIES

It is Department of Justice policy for INS officers to cooperate with local and state law enforcement officers who notify the INS of suspected violations under state law. This policy includes INS officers assisting in enforcing local law where the matter is serious and the need to act is imperative. Should an on-duty agent happen to witness a felony or violent misdemeanor cognizable under state law, the INS expects that the agent will take reasonable action as a law enforcement officer to prevent the crime and/or apprehend the violator. Unless specifically authorized as a peace officer under state law, the agent's authority in these situations is that of an ordinary citizen. The limitations and liabilities associated with such action are defined in state law. INS officers must be thoroughly familiar with the applicable state laws of their jurisdiction. Further, this policy does not apply to routine traffic violations or other minor offenses. The INS will fully support an agent's reasonable actions in the above situations, and the agent will be regarded as acting within the scope of federal employment and official duties. (See Representation of INS Employees, Chapter IX).

Further, INS agents may engage in joint operations with local officers that are expected to uncover violations of both immigration and local laws. The INS is regularly asked to assist local officers in tracking and locating lost persons or suspected criminals. INS agents will continue to assist such local enforcement efforts; however, INS officers may make arrests for non-immigration state criminal offenses only to the extent that the individual state laws permit them to do so as private citizens. As noted previously, state law may also provide peace officer status to federal officers which would also provide the right to make arrests for non-immigration offenses. However, such authority should only be exercised in conformity with INS policy. In working with local police, INS officers should make it clear that the INS officers are solely responsible for immigration law determinations. Local police are responsible for enforcement of local laws.

The following guidelines are to assist the INS in carrying out the policy of mutual cooperation:

(l) INS officers may not direct, propose, or request that state or local law enforcement operations be carried out when these operations will be beneficial only to the INS;

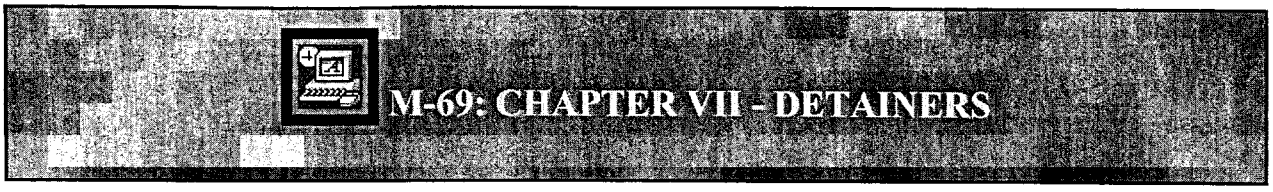
(2) Joint operations may not be conducted unless there are independent and articulable facts that clearly indicate that the involvement of both the INS and another law enforcement entity is required;

(3) Local authorities should be consulted whenever an INS operation is likely to uncover a violation of state or local codes or result in, for example, a need for crowd or traffic control;

INSERTS

(4) Information furnished pursuant to legalization applications cannot be examined by anyone other than officers or employees of the Department of Justice. This information cannot be used except to make a determination on the application or for federal criminal prosecutions for fraud in connection with the application; 197

(5) Information on the Form I-9 may not be used except to enforce provision of Title 8, United States Code or to prosecute violations of sections 1001, 1028, 1546, and 1621 of title 18, United States Code 198.



Section 287(d) of the Act mandates that the INS make a prompt determination whether to issue a detainer when an alien is arrested by Federal, State or local law enforcement officers for a controlled substances violation. The provisions of this section are triggered if the official:

(1) has reason to believe that the alien may not have been lawfully admitted into the United States, or is otherwise not lawfully present in the United States;

(2) expeditiously informs an appropriate INS officer of the arrest and of facts concerning the status of the alien; and

(3) requests a prompt determination.

If a detainer under these provisions is issued and the alien is not otherwise detained by Federal, State, or local officials, the Attorney General must expeditiously take custody of the alien.

Detainers may also be placed against any other alien who is amenable to exclusion and deportation proceedings under any provision of the law 199. Detainers may only be issued by immigration officers pursuant to 8 C.F.R. 242.2 and 287.7. A detainer is lodged by filing Form I-247 "Immigration Detainer - Notice of Action by Immigration and Naturalization Service." This document is merely a notice to the institution and a request for thirty (30) days notice prior to release of the alien from custody. It does not limit the institution's discretion in any decision affecting the offender's classification, work and quarters assignment or other treatment which he would otherwise receive, and this is specifically stated on the face of the notice. Unlike detainers issued pursuant to section 287(d) of the Act, these notices do not require the INS to take custody of the alien upon release from custody.

The provisions of 8 C.F.R.242.2(a) also authorize detainers to be issued in two other circumstances. Telephonic detainers may be placed by officers. These detainers must be confirmed in writing within twenty-four (24) hours of issuance. These detainers must contain substantially the same language in the Form I-247. They are also merely a notice to the institution and a request that INS be notified prior to release of the individual. This provides INS officers the opportunity to question the individual prior to release to determine whether he or she is a deportable alien who should be arrested.

Temporary detention of an alien can be obtained at the Service request 200. This "detainer" is unlike those previously discussed because it is not a mere notice and request for information prior to release. This section applies only when the individual is no longer subject to detention by the criminal justice agency. It authorizes the alien to be maintained in custody for "a period not to exceed forty-eight hours, in order to permit assumption of custody by the Service." 201 A detainer placed under this subsection is an arrest which must be supported by probable cause.

INSERTS

These detainers should be followed by an Order to Show Cause. Since it is difficult to establish that these aliens are likely to abscond before a warrant can be obtained to support an arrest without warrant under section 287(a)(2) of the Act, a warrant of arrest should be issued and served upon the alien. Except as provided in 8 C.F.R. 242.2(a)(4), a detainer does not bind the INS to any fiscal responsibility until custody is actually assumed by the Service.

M-69: CHAPTER VIII - POSSIBLE CONSEQUENCES OF IMPROPER ACTIONS BY IMMIGRATION OFFICERS

A. EXCLUSION OF EVIDENCE

1. Criminal Prosecutions

The fourth amendment guarantees the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. Any evidence secured through an unreasonable search or seizure may be barred from use in any subsequent criminal prosecution. This bar on the use of such evidence is known as the "exclusionary rule." The fourth amendment guarantees the people's right to privacy. The courts have fashioned the exclusionary rule to protect that right and to deter overzealous law enforcement officers. Convictions based on unlawful searches and seizures are often reversed on the basis of the exclusionary rule 202.

The exclusionary rule applies to evidence obtained in violation of other constitutional and statutory rights such as the sixth amendment right to counsel and the fifth and fourteenth amendment rights to due process of law.

2. Administrative (Civil) Proceedings

The Supreme Court has held that the exclusionary rule does not apply to civil deportation proceedings 203. Nevertheless, the Board of Immigration Appeals has excluded evidence seized in violation of the due process requirement of the fifth amendment where the officer's conduct was outrageous 204. In addition, illegally seized evidence which is admissible in deportation proceedings will remain subject to the exclusionary rule in any subsequent criminal prosecution.

Although illegally seized evidence may be admissible in civil deportation proceedings, the Department of Justice in no way condones illegal searches. On the contrary, officers who conduct unconstitutional searches may still be subject to disciplinary action, civil suit, and criminal prosecution. If there is any doubt about the legality or propriety of a proposed plan of action, the safest course is to obtain advance instructions from a supervisor or legal counsel. This can be done by telephone or radio where prompt action is imperative.

3. Effect on Validity of Proceedings

If a search or seizure has been made in violation of the Constitution, that fact alone will not necessarily invalidate criminal proceedings. If there is untainted evidence -- not illegally seized and not derived from an illegal search or seizure -- upon which to base a conviction, the proceedings are valid and need not be terminated 205. The Supreme Court has also ruled that,

under certain circumstances, a "reasonable good-faith exception" to the exclusionary rule may apply where illegally seized evidence is acquired pursuant to a defective search warrant 206. This decision recognizes that an improper warrantless search cannot be deterred where the officer has no reason to believe that there has been any impropriety.

B. CIVIL LIABILITY

1. Personal Liability of Federal Agents

The Supreme Court, in Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics 207, held that violation of the fourth amendment by a federal agent acting under color of authority gives rise to a cause of action for damages based on unconstitutional conduct.

Federal officials generally are entitled to absolute immunity only in those exceptional situations where it is demonstrated that absolute immunity is essential for the conduct of public business 208. Other federal officials entitled to absolute immunity are: (1) hearing examiners or administrative law judges when they are performing judicial acts; (2) agency officials who perform functions analogous to those of a prosecutor for their parts in the decision to initiate or continue a proceeding subject to agency adjudication; and (3) agency attorneys presenting evidence at agency hearings. Otherwise, federal executive officials are entitled only to qualified immunity for those actions taken in the performance of their official duties.

Federal officials are shielded from liability for civil damages if their conduct does not violate "clearly established" statutory or constitutional rights which a reasonable person would have known 209. This is an important reason for officers to remain familiar with the laws of arrest, search, and seizure.

Department of Justice policy also permits, in the discretion of the Attorney General, indemnification of Department employees who suffer adverse money judgments as a result of official acts 210. This provides additional protection to officers who perform reasonable actions under often difficult circumstances necessitating split-second judgments.

Congress has also recognized that federal officials merit additional legal protection and therefore enacted the "Federal Employees Liability Reform and Tort Compensation Act." While not providing protection against unreasonable violations of constitutional rights, such as the so-called Bivens actions previously mentioned, this does protect officers for violations of law resulting from actions taken within the scope of employment 211. This statute substitutes the United States as the defendant in lieu of the officer.

Officers may also wish to obtain personal liability insurance. This insurance is comparatively inexpensive. It provides peace of mind and eliminates the need to rely upon discretionary determinations to provide legal counsel or to indemnify against adverse judgments.

2. Liability of the United States for Money Damages

Since 28 U.S.C. 2680(h) was amended in March 1974, the United States has been amenable to civil actions on claims of assault, battery, false imprisonment, false arrest, abuse

of process, or malicious prosecution because of acts or omissions of investigative or law enforcement personnel acting within the scope of their office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred 212. If a plaintiff wins a judgment against the United States, subsequent suits against the officers in their individual capacity for the same subject matter are barred by 28 U.S.C. 2676. Judgment against an individual officer does not preclude later action against the United States. However, double recovery is not permissible 213.

If the actions of an officer are outside the scope of employment, the action would be against that officer in his or her personal capacity. The United States could not be sued. 214

C. CRIMINAL LIABILITY

An INS officer who acts improperly in performance of assigned duties may risk prosecution for violation of state or federal criminal laws. Such crimes include: criminal trespass, breaking and entering, harassment, assault and battery, kidnapping, homicide, maliciously procuring a search warrant, liability for traffic violations, exceeding authority in executing a search warrant, searching a dwelling without a search warrant, maliciously and without reasonable cause searching any other building or property without a search warrant, and depriving an inhabitant of the United States of constitutional or other legal rights, privileges, or immunities under color of law.

D. DISCIPLINARY ACTIONS

For any of the improper actions discussed above, whether any civil or criminal proceedings are commenced, the INS officer may be subject to agency disciplinary action with possible penalties ranging from an official letter of reprimand to removal from employment, which may bar future federal employment.

M-69: CHAPTER IX - REPRESENTATION OF INS EMPLOYEES SUED IN THEIR INDIVIDUAL CAPACITIES

A. DEPARTMENT POLICY

It is the policy of the Department of Justice to represent a federal employee who is sued in a state criminal action or in a state or federal civil action or subpoenaed in his or her individual capacity if it is considered in the best interests of the United States 215.

Representation by the Department is never available in a federal criminal proceeding or investigation or in an agency disciplinary proceeding 216. Representation by the Department is not available in a civil case if the employee is the subject of a federal criminal investigation for the same act or acts 217. The Department in its discretion may provide a private attorney to the employee at government expense, provided that no decision has been made to seek an indictment against the employee 218.

Every INS employee sued in his or her individual capacity has the right to hire private counsel at his or her expense and the Department has no right to intervene (except perhaps in an amicus capacity) unless requested.

The Department criteria for personal representation of an employee who is personally sued for damages or the subject of state criminal proceedings or the subject of a congressional or judicial subpoena are:

(1) The employee's actions must reasonably appear to have been performed within the scope of the federal employment; and

(2) It must be in the interest of the United States to provide the requested representation.

B. PROCEDURE FOR REQUESTING REPRESENTATION

Every INS officer or employee who is sued in his or her individual capacity or is the subject of a subpoena, and who believes that he or she needs and qualifies for Department representation, must request it in writing.

The representation request must be submitted to the Office of the General Counsel with a copy of the summons and complaint or other legal papers. The request should contain answers to the following questions:

(1) Were you personally served?

(2) If so, what was the time, place, and manner of service?

INSERTS

(3) If not, was anyone served who was authorized by you to accept service?

(4) Do you in good faith believe that you were acting within the scope of your employment?

(5) If so, what is the basis for your belief?

The officer or employee also should provide answers to the allegations in the complaint that relate to him or her and state what he or she actually did with regard to the actions complained of. The request for representation should be accompanied by a properly executed DOJ Form 399. The Civil Division of the Department of Justice adjudicates all requests for representation with the advice and recommendation of the General Counsel.

C. ATTORNEY-CLIENT PRIVILEGE

Department of Justice attorneys who undertake representation of individual clients personally sued for money damages have a full attorney-client relationship with those individuals 219. This also extends to all DOJ attorneys, which includes INS attorneys who review or transmit a request for representation. The attorney-client relationship commences at such point as the individual requests representation and applies to communications made for the purpose of securing such representation. No material contained in the request nor confidences exchanged during the process may be used against the individual defendant in agency disciplinary or other proceedings, even if the DOJ declines representation.

When an INS employee requests DOJ representation, it is recommended that he or she submit the request directly to the appropriate District Counsel and clearly mark on each written communication that the information is subject to the attorney-client privilege. The material submitted with the request for representation must not be provided to anyone except legal counsel or the attorney-client privilege may be lost.

D. INDEMNIFICATION POLICY

An INS defendant employee may apply for indemnification upon the entry of an adverse verdict, judgment, or other monetary award. The indemnification policy of the Department of Justice is as follows:

(1) The Department of Justice may indemnify the Department of Justice employee, for any verdict, judgment, or other monetary award which is rendered against such employee, provided that the conduct giving rise to the verdict, judgment, or award was taken within the scope of employment and that such indemnification is in the interest of the United States, as determined by the Attorney General or his or her designee.

(2) The Department of Justice may settle or compromise a personal damages claim against a Department of Justice employee by the payment of available funds, at any

time, provided the alleged conduct giving rise to the personal damages claim was taken within the scope of employment and that such settlement or compromise is in the interest of the United States, as determined by the Attorney General or his or her designee.

(3) Absent exceptional circumstances as determined by the Attorney General or designee, the Department will not entertain a request either to agree to indemnify or to settle a personal damages claim before entry of award.

(4) The Department of Justice employee may request indemnification to satisfy a verdict, judgment, or award entered against the employee. The employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, award, or settlement proposal, if on appeal, to the head of his or her employing component, who shall then submit to the appropriate Assistant Attorney General, in a timely manner, a recommended disposition of the request. Where appropriate, the Assistant Attorney General shall seek the views of the United States Attorney; in all such cases the Civil Division shall be consulted. The Assistant Attorney General shall forward the request, the employing component's recommendation, and the Assistant Attorney General's recommendation to the Attorney General for decision.

(5) Any payment under this section either to indemnify a Department of Justice employee or to settle a personal damages claim shall be contingent upon the availability of appropriated funds of the employing component of the Department of Justice.

E. PROCEDURE FOR REQUESTING INDEMNIFICATION

As with requests for representation, requests for indemnification should be submitted to the office of the General Counsel. They may be transmitted through the Regional Counsel, with the District Counsel being the point of local contact. Pursuant to Department policy, this request can be made only after entry of a judgment against the officer.

M-69: FOOTNOTES

M-69: FOOTNOTE 1

1. See 8 C.F.R. 3.1(g).

M-69: FOOTNOTE 2

2. United States v. Brignoni-Ponce, 422 U.S. 873 (1975).

M-69: FOOTNOTE 3

3. 57 Fed. Reg. 47011 (October 14, 1992).

M-69: FOOTNOTE 4

4. For an extensive and substantive discussion on criminal prosecutions of immigration violations, see The United States Attorneys' Manual, title 9, chap. 73 (Oct. 1, 1988).

M-69: FOOTNOTE 5

5. Zepeda v. INS, 753 F.2d 719 (9th Cir. 1985).

M-69: FOOTNOTE 6

6. Carroll v. United States, 267 U.S. 132, 154 (1925).

M-69: FOOTNOTE 7

7. Florida v. Bostwick, 111 S. Ct. 2382 (1991); INS v. Delgado, 466 U.S. 210, 215 (1984); Florida v. Royer, 460 U.S. 491, 497 (1983) (plurality opinion); United States v. Mendenhall, 446 U.S. 544 (1980); Terry v. Ohio, 392 U.S. 1, 19 n.16 (1968).

M-69: FOOTNOTE 8

8. Delgado, 466 U.S. at 215; Royer, 460 U.S. at 497-98; Zepeda v. INS, 753 F.2d 719 (9th Cir. 1985); United States v. Alvarez-Sanchez, 774 F.2d 1036, 1040 (11th Cir. 1985); Cuevas-Ortega v. INS, 588 F.2d 1274, 1277 (9th Cir. 1979); Cordon de Ruano v. INS, 554 F.2d 944, 946 (9th Cir. 1977). But see La Duke v. Nelson, 762 F.2d 1318, 1329 (9th Cir. 1985) (holding that the actions of immigration officers in conducting a farm ranch check precluded a finding of voluntary consent).

M-69: FOOTNOTE 9

INSERTS

9. Delgado, 466 U.S. at 215; Royer, 460 U.S. at 502; Mendenhall, 446 U.S. at 554.

M-69: FOOTNOTE 10

10. Florida v. Bostwick, 111 S. Ct. 2382 (1991); Royer, 460 U.S. at 519 n.4.

M-69: FOOTNOTE 11

11. United States v. Sokolow, 490 U.S. 1 (1989); Terry v. Ohio, 392 U.S. 1, 27 (1968); United States v. Sugrim, 732 F.2d 25, 28 (2d Cir. 1984); United States v. Reyes-Oropesa, 596 F.2d 399 (9th Cir. 1979).

M-69: FOOTNOTE 12

12. United States v. Hensley, 469 U.S. 221 (1985); United States v. Cortez, 449 U.S. 411, 417 n.2 (1981).

M-69: FOOTNOTE 13

13. United States v. Brignoni-Ponce, 422 U.S. 873, 884 (1975).

M-69: FOOTNOTE 14

14. Michigan v. Long, 463 U.S. 1032, 1049-1050 (1983); Adams v. Williams, 407 U.S. 143, 146-47 (1972); Terry v. Ohio, 392 U.S. 1, 23-24 (1968).

M-69: FOOTNOTE 15

15. Terry, 392 U.S. at 24.

M-69: FOOTNOTE 16

16. Alabama v. White, 110 S. Ct. 2412, 2415-17 (1990); United States v. Sharpe, 470 U.S. 675 (1985); United States v. Cortez, 449 U.S. 411, 417 (1981); United States v. Nargi, 732 F.2d 1102, 1104 (2d Cir. 1984).

M-69: FOOTNOTE 17

17. White, 110 S. Ct. at 2417; Cortez, 449 U.S. at 417; Brignoni-Ponce, 422 U.S. at 884.

M-69: FOOTNOTE 18

18. Brignoni-Ponce, 422 U.S. at 884.

M-69: FOOTNOTE 19

INSERTS

19. Pennsylvania v. Mimms, 434 U.S. 106 (1977); United States v. Hensley, 469 U.S. 221, 235 (1985).

M-69: FOOTNOTE 20

20. Berkemer v. McCarty, 468 U.S. 420, 442 (1984).

M-69: FOOTNOTE 21

21. United States v. Rose, 731 F.2d 1337, 1343 (8th Cir. 1984).

M-69: FOOTNOTE 22

22. Berkemer, 468 U.S. at 437-38; Oregon v. Mathiason, 429 U.S. 492, 495 (1977); W. LaFave & J. Israel, Criminal Procedure 6.6(C) at 290 (Student ed. 1985).

M-69: FOOTNOTE 23

23. Min-Shey Hung v. United States, 617 F.2d 201, 202 (10th Cir. 1980); Avila-Gallegos v. INS, 525 F.2d 666, 667 (2d Cir. 1975); Ojeda-Vinales v. INS, 523 F.2d 286 (2d Cir. 1975); United States v. Cantu, 519 F.2d 494, 496 (7th Cir.), cert. denied, 423 U.S. 1035 (1975); Au Yi Lau v. INS, 445 F.2d 217, 222 (D.C. Cir.), cert. denied, 404 U.S. 864 (1971).

M-69: FOOTNOTE 24

24. Yam Sang Kwai v. INS, 411 F.2d 683 (D.C. Cir.), cert. denied, 396 U.S. 877 (1969); Hon Keung Kung v. INS, 356 F. Supp. 571, 576 (E.D. Mo. 1973).

M-69: FOOTNOTE 25

25. United States v. Garcia, 616 F.2d 210 (5th Cir. 1980); United States v. Hernandez-Rojas, 470 F. Supp. 1212, 1220 (E.D.N.Y.), aff'd, 615 F.2d 1351 (2d Cir. 1979), cert. denied, 449 U.S. 864 (1980); Au Yi Lau v. INS, 445 F.2d at 223-224.

M-69: FOOTNOTE 26

26. Hernandez-Rojas, 470 F. Supp. at 1220; Cantu, 519 F.2d at 496.

M-69: FOOTNOTE 27

27. Min-Shey Hung v. United States, 617 F.2d 201, 202 (10th Cir. 1980); Yiu Fong Cheung v. INS, 418 F.2d 460 (D.C. Cir. 1969).

M-69: FOOTNOTE 28

28. 8 C.F.R. 287.3; 8 C.F.R. 242.2(c)(2); Navia-Duran v. INS, 568 F.2d 803 (1st Cir. 1977).

INSERTS

M-69: FOOTNOTE 29

29. 8 C.F.R.287.3.

M-69: FOOTNOTE 30

30. County of Riverside v. McLaughlin, 111 S. Ct. 1661 (1991).

M-69: FOOTNOTE 31

31. Brower v. County of Inyo, 489 U.S. 593 (1989).

M-69: FOOTNOTE 32

32. Graham v. Connor, 490 U.S. 386 (1989).

M-69: FOOTNOTE 33

33. See Border Patrol Handbook at 17-5 (Rev. 4/1/85).

M-69: FOOTNOTE 34

34. See Tennessee v. Garner, 471 U.S. 1 (1985).

M-69: FOOTNOTE 35

35. See Border Patrol Handbook at 17-5 and 24-3.

M-69: FOOTNOTE 36

36. See note 3, supra.

M-69: FOOTNOTE 37

37. Miranda v. Arizona, 384 U.S. 436 (1966).

M-69: FOOTNOTE 38

38. Berkemer v. McCarty, 468 U.S. 420 (1984); United States v. Alvarado Garcia, 781 F.2d 422 (5th Cir. 1986).

M-69: FOOTNOTE 39

39. See Berkemer, 468 U.S. 420; Chavez-Raya v. INS, 519 F.2d 397 (7th Cir. 1975); United States v. Mata-Abundiz, 717 F. 2d 1277 (9th Cir. 1983); United States v. Henry, 604 F.2d 908 (5th Cir. 1979) (requiring Miranda warnings).

INSERTS

M-69: FOOTNOTE 40

40. Beckwith v. United States, 425 U.S. 341, 346-347 (1976).

M-69: FOOTNOTE 41

41. Henry, 604 F.2d at 914.

M-69: FOOTNOTE 42

42. Mata-Abundiz, 717 F.2d at 1279. See generally Mathis v. United States, 391 U.S. 1 (1968).

M-69: FOOTNOTE 43

43. Schmerber v. California, 384 U.S. 757 (1966); United States v. Wade, 388 U.S. 218 (1967); Gilbert v. California, 388 U.S. 263 (1967).

M-69: FOOTNOTE 44

44. Minnick v. Mississippi, 111 S. Ct. 486 (1990); Michigan v. Harvey, 494 U.S. 344 (1990); Connecticutt v. Barrett, 479 U.S. 523, 528-29 (1987); Smith v. Illinois, 469 U.S. 91 (1984); Oregon v. Bradshaw, 462 U.S. 1039, 1044 (1983); Edwards v. Arizona, 451 U.S. 477, 484-85 (1981).

M-69: FOOTNOTE 45

45. Michigan v. Mosley, 423 U.S. 96, 104 (1975).

M-69: FOOTNOTE 46

46. Amending 18 U.S.C. 3041, 3141-3143, 3146-3152, 3568.

M-69: FOOTNOTE 47

47. 18 U.S.C. 3144, referencing 18 U.S.C. 3142.

M-69: FOOTNOTE 48

48. 18 U.S.C. 3142(b).

M-69: FOOTNOTE 49

49. 18 U.S.C. 3142(c).

M-69: FOOTNOTE 50

50. 18 U.S.C. 3144.

M-69: FOOTNOTE 51

51. 18 U.S.C. 3145.

M-69: FOOTNOTE 52

52. United States v. Valenzuala-Bernal, 458 U.S. 858 (1982).

M-69: FOOTNOTE 53

53. Smith v. Maryland, 442 U.S. 735, 739 (1979).

M-69: FOOTNOTE 54

54. Smith, 442 U.S. at 740; United States v. Katz, 389 U.S. 347, 357 (1967).

M-69: FOOTNOTE 55

55. United States v. Leon, 468 U.S. 325 (1984).

M-69: FOOTNOTE 56

56. Fed. R. Crim. P. 41(c)(2); United States v. Rome, 809 F.2d 665 (10th Cir. 1987).

M-69: FOOTNOTE 57

57. Carroll v. United States, 267 U.S. 132, 162 (1925); Brinegar v. United States, 165 F.2d 512, 514 (10th Cir. 1948), aff'd, 338 U.S. 160 (1949).

M-69: FOOTNOTE 58

58. See Illinois v. Gates, 462 U.S. 213 (1983) (abandoning the "two-pronged test" established in Aguilar and Spinelli and reaffirming the totality of the circumstances analysis for probable cause determinations); see also Aguilar v. Texas, 378 U.S. 108 (1964); Spinelli v. United States, 393 U.S. 410 (1969).

M-69: FOOTNOTE 59

59. Gates, 462 U.S. at 236; United States v. Seybold, 726 F.2d 502, 503 (9th Cir. 1984).

M-69: FOOTNOTE 60

60. United States v. Estrada, 733 F.2d 683, 685 (9th Cir.), cert. denied, 105 S. Ct. 168 (1984).

M-69: FOOTNOTE 61

INSERTS

61. United States v. Alexander, 761 F.2d 1294, 1300 (9th Cir. 1985); United States v. Roberts, 747 F.2d 537, 543 (9th Cir. 1984); United States v. Gagnon, 635 F.2d 766, 768 (10th Cir.), cert. denied, 451 U.S. 1018 (1981).

M-69: FOOTNOTE 62

62. Michigan v. Clifford, 464 U.S. 287 (1984); Michigan v. Tyler, 436 U.S. 499 (1978).

M-69: FOOTNOTE 63

63. Blackie's House of Beef, Inc. v. Castillo, 659 F.2d 1211 (D.C. Cir. 1981), cert. denied, 455 U.S. 940 (1982). See also Marshall v. Horn Seed Co., 647 F.2d 96 (10th Cir. 1981).

M-69: FOOTNOTE 64

64. International Molders' and Allied Workers' Local Union No. 164 v. Nelson, 799 F.2d 547 (9th Cir. 1986), on remand, 674 F. Supp. 294 (N.D. Cal. 1987). The warrants do not authorize seizure.

M-69: FOOTNOTE 65

65. Marshall v. Barlow's, Inc., 436 U.S. 307 (1978).

M-69: FOOTNOTE 66

66. The leading case on factory surveys is INS v. Delgado, 466 U.S. 210 (1984); see also, Kotler Industries v. INS, 586 F. Supp. 72 (N.D. Ill. 1984); Babula v. INS, 665 F.2d 293 (3d Cir. 1981); Mendoza v. INS, 559 F. Supp. 842 (W.D. Tex. 1982).

M-69: FOOTNOTE 67

67. Illinois Migrant Council v. Pilliod, 531 F. Supp. 1011, 1022-23 (N.D. Ill. 1982).

M-69: FOOTNOTE 68

68. Marshall v. Barlow's, Inc., 436 U.S. 307, 320-21 (1978).

M-69: FOOTNOTE 69

69. Barlow's, 436 U.S. at 320, citing Camara v. Municipal Court, 387 U.S. 523 (1967).

M-69: FOOTNOTE 70

70. See In the Matter of Establishment Inspection of Gilbert & Bennett Manufacturing Co., 589 F.2d 1335 (7th Cir.), cert. denied, 444 U.S. 884 (1979).

INSERTS

M-69: FOOTNOTE 71

71. Stoddard Lumber Co. v. Marshall, 627 F.2d 984 (9th Cir. 1980).

M-69: FOOTNOTE 72

72. Donovan v. Wollaston Alloys, 695 F.2d 1 (1st Cir. 1983);Stoddard Lumber Co. v. Marshall, 627 F.2d 984 (9th Cir. 1980).

M-69: FOOTNOTE 73

73. Guerra v. Sutton, 783 F.2d 1371, 1375 (9th Cir. 1986).

M-69: FOOTNOTE 74

74. Chimel v. California, 395 U.S. 752, 763 (1969); United v. Chadwick, 433 U.S. 1 (1977).States.

M-69: FOOTNOTE 75

75. United States v. Robinson, 414 U.S. 218 (1973).

M-69: FOOTNOTE 76

76. Chimel, 395 U.S. at 763.

M-69: FOOTNOTE 77

77. New York v. Belton, 453 U.S. 454, 460 (1981).

M-69: FOOTNOTE 78

78. Michigan v. Long, 463 U.S. 1032 (1983).

M-69: FOOTNOTE 79

79. Chimel, 395 U.S. at 763; Mapp v. Ohio, 367 U.S. 643 (1961); United States v. Jackson, 576 F.2d 749 (8th Cir.), cert. denied, 439 U.S. 858 (1978).

M-69: FOOTNOTE 80

80. Maryland v. Buie, 494 U.S. 325, 334-334 (1990).

M-69: FOOTNOTE 81

81. Agnello v. United States, 269 U.S. 20 (1925); James v. Louisiana, 382 U.S. 26 (1965); United States v. Anthon, 648 669, 675-76 (10th Cir. 1981).F.2d.

INSERTS

M-69: FOOTNOTE 82

82. Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973).

M-69: FOOTNOTE 83

83. Schneckloth, 412 U.S. at 227; United States v. Lopez, 777 543, 548 (10th Cir. 1985); United States v. Ritter, 752 F.2d 435F.2d(9th Cir. 1985) (all holding consent to be voluntary). Compare LaDuke v. Nelson, 762 F.2d l3l8, 1329 (9th Cir.search of migrant farm housing held not voluntary where INS officers failed to advise occupants of right to refuse consent; where occupants had inherent fear of uniformed officers and were oflimited education and linguistic ability; and where searches occurred in early morning or late evening).

M-69: FOOTNOTE 84

84. Bumper v. North Carolina, 391 U.S. 543 (1968); LaDuke v.Nelson, 762 F.2d at 1329.

M-69: FOOTNOTE 85

85. Commonwealth v. Angivoni, 417 N.E.2d 422 (Mass. 1981); LaDukev. Nelson, 762 F.2d at 1329.

M-69: FOOTNOTE 86

86. Higgins v. U.S., 209 F.2d 819, 820 (D.C. Cir. 1954); LaDuke v.Nelson, 762 F.2d at 1329.

M-69: FOOTNOTE 87

87. United States v. Watson, 423 U.S. 411 (1976).

M-69: FOOTNOTE 88

88. United States v. Baggatts, 646 F. Supp. 589, 591 (D.D.C.1986).

M-69: FOOTNOTE 89

89. United States v. Ritter, 752 F.2d 435 (9th Cir. 1985).

M-69: FOOTNOTE 90

90. United States v. Matlock, 415 U.S. 164, 171 (1974).

M-69: FOOTNOTE 91

91. Illinois v. Rodriguez, 497 U.S. 177 (1991).

INSERTS

M-69: FOOTNOTE 92

92. Florida v. Jimeno, 111 S. Ct. 1801, 1805 (1991); Illinois v.Rodriguez, 497 U.S. at 183-189; Florida v. Royer, 460 U.S. 491, 501-502 (1983).

M-69: FOOTNOTE 93

93. Jimeno, 111 S. Ct. at 1805-1806 (1991).

M-69: FOOTNOTE 94

94. Warden v. Hayden, 387 U.S. 294 (1967).

M-69: FOOTNOTE 95

95. United States v. Gomez, 652 F. Supp. 715, 718 (S.D.N.Y 1987);United States v. Echegoyen, 799 F.2d 1271 (9th Cir. 1986); Welsh v.Wisconsin, 466 U.S. 740, 753 (1984) (no exigency where underlying DWI was a non-criminal traffic offense and suspect was off the road).

M-69: FOOTNOTE 96

96. Mincey v. Arizona, 437 U.S. 385, 392-93 (1978).

M-69: FOOTNOTE 97

97. Warden v. Hayden, 387 U.S. 294 (1967).

M-69: FOOTNOTE 98

98. Warden v. Hayden, 387 U.S. at 298-99.

M-69: FOOTNOTE 99

99. United States v. Santana, 427 U.S. 38 (1976).

M-69: FOOTNOTE 100

100. Santana, 427 U.S. 38; United States v. Varkonyi, 645 F.2d 453(5th Cir. 1981).

M-69: FOOTNOTE 101

101. Welsh v. Wisconsin, 466 U.S. 740 (1984) (no hot pursuit wherepolice entered suspect's home minutes after a witness had observed suspect in an apparently intoxicated condition fleeing from thescene of an accident, a civil offense); United States v. Morgan, 743 F.2d 1158 (6th Cir. 1984) (no hot pursuit where officers met ata local coffee shop and assessed the situation, waited for the arrival of the sheriff before proceeding to defendant's house).

INSERTS

M-69: FOOTNOTE 102

102. Maryland v. Macon, 472 U.S. 463 (1985).

M-69: FOOTNOTE 103

103. Hester v. United States, 265 U.S. 57, 59 (1924); Oliver v. United States, 466 U.S. 170 (1984).

M-69: FOOTNOTE 104

104. Harris v. United States, 390 U.S. 234 (1968); United States v. Miguel, 340 F.2d 812 (2d Cir.), cert. denied, 382 U.S. 859 (1965).

M-69: FOOTNOTE 105

105. Bell v. Wolfish, 441 U.S. 520 (1979).

M-69: FOOTNOTE 106

106. Hudson v. Palmer, 468 U.S. 517 (1984).

M-69: FOOTNOTE 107

107. Block v. Rutherford, 468 U.S. 576 (1984).

M-69: FOOTNOTE 108

108. Procunier v. Martinez, 416 U.S. 396 (1974).

M-69: FOOTNOTE 109

109. Wolff v. McDonnell, 418 U.S. 539 (1974).

M-69: FOOTNOTE 110

110. Wolff, 418 U.S. at 576-577; Taylor v. Sterrett, 532 F.2d 462(5th Cir. 1976).

M-69: FOOTNOTE 111

111. Wolff, 418 U.S. 539 (1976).

M-69: FOOTNOTE 112

112. Procunier, 416 U.S. at 413.

INSERTS

M-69: FOOTNOTE 113

113. Procunier, 416 U.S. at 418-419.

M-69: FOOTNOTE 114

114. Daughtery v. Harris, 476 F.2d 292 (10th Cir.), cert. denied, 414 U.S. 872 (1973).

M-69: FOOTNOTE 115

115. Flores v. Meese, 681 F. Supp. 665 (C.D. Cal. 1988).

M-69: FOOTNOTE 116

116. United States v. Ramsey, 431 U.S. 606, 621 (1977).

M-69: FOOTNOTE 117

117. Ramsey, 431 U.S. at 616-619.

M-69: FOOTNOTE 118

118. Carroll v. United States, 267 U.S. 132 (1925); Boyd v. UnitedStates, 116 U.S. 616 (1886).

M-69: FOOTNOTE 119

119. Section 235 of the Act; 8 U.S.C. 1225.

M-69: FOOTNOTE 120

120. Ramsey, 431 U.S. at 616-619.

M-69: FOOTNOTE 121

121. United States v. Duncan, 693 F.2d 971, 977 (9th Cir. 1982), cert. denied, 461 U.S. 961 (1983); United States v. Ajlouny, 629F.2d 830, 834 (2d Cir. 1980), cert. denied, 449 U.S. 1111 (1981),citing, California Bankers Ass'n v. Shultz, 416 U.S. 21, 63 (1974)(dicta that "those entering and leaving the country may be examined as to their belongings and effects, all without violating the fourth amendment").

M-69: FOOTNOTE 122

122. United States v. Whiting, 781 F.2d 692, 696 (9th Cir. 1986).

M-69: FOOTNOTE 123

123. Almeida-Sanchez v. United States, 413 U.S. 266 (1973); UnitedStates v. Charleus, 871

F.2d 265 (2d Cir. 1989).

M-69: FOOTNOTE 124

124. United States v. Montoya de Hernandez, 473 U.S. 531 (1985); United States v. Oyekan, 786 F.2d 832 (8th Cir. 1986); UnitedStates v. Vega-Barvo, 729 F.2d 1341 (11th Cir. 1984), cert. denied 469 U.S. 1088 (1984).

M-69: FOOTNOTE 125

125. United States v. Lincoln, 494 F.2d 833 (9th Cir. 1974).

M-69: FOOTNOTE 126

126. United States v. Rogers, 504 F.2d 1079 (5th Cir. 1974), cert. denied, 422 U.S. 1042 (1975).

M-69: FOOTNOTE 127

127. United States v. Alfonso, 759 F.2d 728, 734 (9th Cir. 1985).

M-69: FOOTNOTE 128

128. United States v. Gaviria, 805 F.2d 1108, 1112-14 (2d Cir. 1986) (customs); United States v. Alfonso, 759 F.2d 728, 734-35(9th Cir. 1985); United States v. Barbin, 743 F.2d 256, 261 (5thCir. 1984) (tire and trailer tracks established border crossing);United States v. Jacobson, 647 F.2d 990 (9th Cir. 1981); UnitedStates v. Richards, 638 F.2d 765, 771-772 (5th Cir. 1981); United States v. Espericueta-Reyes, 631 F.2d 616, 619-620 (9th Cir. 1980);United States v. Bowman, 502 F.2d 1215, 1219 (5th Cir. 1974);Castillo-Garcia v. United States, 424 F.2d 482 (9th Cir. 1970).

M-69: FOOTNOTE 129

129. United States v. Alfonso, 759 F.2d 728, 734 (9th Cir. 1985).

M-69: FOOTNOTE 130

130. Castillo-Garcia v. United States, 424 F.2d 482, 485 (9th Cir. 1970).

M-69: FOOTNOTE 131

131. United States v. Driscoll, 632 F.2d 737, 739 (9th Cir. 1980).

M-69: FOOTNOTE 132

132. United States v. Hill, 939 F.2d 93 (11th Cir. 1991).

INSERTS

M-69: FOOTNOTE 133

133. United States v. Ramsey, 431 U.S. 606, 620 (1977); UnitedStates v. Jackson, 825 F.2d 853, 859 (5th Cir. 1987) (en banc); seealso United States v. Montoya de Hernandez, 473 U.S. 531, 537-38(1985).

M-69: FOOTNOTE 134

134. Carroll v. United States, 267 U.S. 132 (1925); Jackson, 825F.2d at 858.

M-69: FOOTNOTE 135

135. Jackson, 825 F.2d at 860, 866 (holding Sierra Blanca checkpoint is not a "border equivalent checkpoint").

M-69: FOOTNOTE 136

136. There are currently no permanent checkpoints judicially recognized as functional equivalents.

M-69: FOOTNOTE 137

137. O.I. 287.30

M-69: FOOTNOTE 138

138. United States v. Martinez-Fuerte, 428 U.S. 543 (1976); United States v. Gordo-Marin, 497 F. Supp. 432 (S.D. Fla. 1980), aff'd, 659 F.2d 58 (5th Cir. 1981).

M-69: FOOTNOTE 139

139. United States v. Ortiz, 422 U.S. 891 (1975).

M-69: FOOTNOTE 140

140. United States v. Faulkner, 547 F.2d 870 (5th Cir. 1977)(nervousness of the driver); United States v. Reyna, 546 F.2d 103(5th Cir. 1977) (nervousness of passengers coupled with suspicious story of misplaced trunk key).

M-69: FOOTNOTE 141

141. United States v. Kidd, 540 F.2d 210 (5th Cir. 1976) (per curiam).

M-69: FOOTNOTE 142

142. Faulkner, 547 F.2d 870.

INSERTS

M-69: FOOTNOTE 143

143. United States v. Gorthy, 550 F.2d 1051 (5th Cir.), cert. denied, 434 U.S. 834 (1977); United States v. Leal, 547 F.2d 1222 (5th Cir. 1977) (per curiam).

M-69: FOOTNOTE 144

144. Martinez-Fuerte, 428 U.S. at 556-560; see also Michigan Dept. of State Police v. Sitz, 444 U.S. 444 (1990).

M-69: FOOTNOTE 145

145. Border Patrol Handbook, Chapter 9; Jasinski v. Adams, 781F.2d 843 (11th Cir. 1986); see also citations at notes 33 and 35supra.

M-69: FOOTNOTE 146

146. 422 U.S. 873 (1975).

M-69: FOOTNOTE 147

147. The pursuit of a vehicle does not in and of itself constitutea seizure of the vehicle for fourth amendment purposes. Californiav. Hodari, 111 S.Ct. 1547 (1991) (chase of juvenile by officer did not constitute 'seizure' by officer); Broyer v. County of Inyo, 489U.S. 593 (1989) (20 mile chase by police cars with flashing lights was not deemed to produce a seizure for fourth amendment purposes);Michigan v. Chesternut, 486 U.S. 567 (1988) (a brief accelerationto catch up with respondent followed by a short drive along side him was not so intimidating that the respondent could reasonably believed that he was not free to disregard the police presence).

M-69: FOOTNOTE 148

148. United States v. Franco-Munoz, 952 F.2d 1055, 1057 (9th Cir. 1991) (vehicle stop supported by reasonable suspicion based on officers' experience with smugglers on particular high way, loaded appearance of vehicle, type of vehicle, driver's failure to acknowledge officers, and fact that driver was Hispanic male);United States v. Lujan-Miranda, 535 F.2d 327 (5th Cir. 1976);United States v. De Witt, 569 F.2d 1338 (5th Cir. 1978) (stop occurred near check point where aliens stopped to see if check point was operating). But see United States v. Rodriguez, 976 F.2d 592,594-96 (9th Cir. 1992) (holding invalid a vehicle stop based on profile similar to that in Franco-Munoz).

M-69: FOOTNOTE 149

149. Compare Franco-Munoz, 952 F.2d at 1057 with Rodriguez, 976 F.2d at 595; see also United States v. Barnard, 553 F.2d 389 (5th Cir. 1977); United States v. Payne, 555 F.2d 475 (5th Cir. 1977). Cf. United States v. Lopez, 564 F.2d 710 (5th Cir. 1977) (failure to make eye contact does not support reasonable suspicion).

INSERTS

M-69: FOOTNOTE 150

150. Barnard, 553 F.2d 389; Payne, 555 F.2d 475.

M-69: FOOTNOTE 151

151. Compare Franco-Munoz, 952 F.2d at 1057 with Rodriguez, 976 F.2d at 595-596.

M-69: FOOTNOTE 152

152. United States v. Cortez, 449 U.S. 411 (1981).

M-69: FOOTNOTE 153

153. Cortez, 449 U.S. 411.

M-69: FOOTNOTE 154

154. Pennsylvania v. Mimms, 434 U.S. 106 (1977); United States v. Hensley, 469 U.S. 221 (1985).

M-69: FOOTNOTE 155

155. See Schneckloth v. Bustamonte, 412 U.S. 218 (1973).

M-69: FOOTNOTE 156

156. United States v. Taylor, 934 F.2d 218 (9th Cir. 1991); United States v. Morales-Zamora, 914 F.2d 200 (10th Cir. 1990).

M-69: FOOTNOTE 157

157. United States v. Brignoni-Ponce, 422 U.S. 873 (1975); Nicacio v. INS, 797 F.2d 700 (9th Cir. 1985).

M-69: FOOTNOTE 158

158. Colorado v. Bertine, 428 U.S. 364 (1976); Illinois v. Lafayette, 462 U.S. 640 (1983).

M-69: FOOTNOTE 159

159. South Dakota v. Opperman, 428 U.S. 364 (1976) (establishing that the inventory search constitutes a well-defined exception to the warrant requirement).

M-69: FOOTNOTE 160

INSERTS

160. Opperman, 428 U.S. 364.

M-69: FOOTNOTE 161

161. Florida v. Wells, 495 U.S. 1 (1990); Colorado v. Bertine, 479 U.S. 367 (1987); Illinois v. Lafayette, 462 U.S. at 648; United States v. Andrade, 784 F.2d 1431 (9th Cir. 1986); United States v. Rabenberg, 766 F.2d 355 (8th Cir. 1985); United States v. Griffin, 729 F.2d 475 (7th Cir.) cert. denied, 469 U.S. 830 (1984).

M-69: FOOTNOTE 162

162. Mincey v. Arizona, 437 U.S. 385, 390 (1978).

M-69: FOOTNOTE 163

163. United States v. Ross, 456 U.S. 798 (1982) (upholding search of paper bag containing drugs); Carroll v. United States, 267 U.S. 132, 158-59 (1925) (upholding search in car upholstery for contraband whiskey).

M-69: FOOTNOTE 164

164. Carroll v. United States, 267 U.S. 132 (1925); California v. Acevedo, 111 S. Ct. 1982 (1991) (overruling United States v. Chadwick, 433 U.S. 1 (1977), which involved the search of a double locked footlocker contained within the trunk of a car).

M-69: FOOTNOTE 165

165. California v. Acevedo, 111 S. Ct. 1982 (1991) (overruling Arkansas v. Sanders, 442 U.S. 753 (1979) and United States v. Chadwick, 433 U.S. 1 (1977)).

M-69: FOOTNOTE 166

166. Acevedo, 111 S. Ct. at 1988.

M-69: FOOTNOTE 167

167. Florida v. Wells, 495 U.S. 1 (1990); United States v. Ross, 456 U.S. 798 (1982); United States v. Johns, 469 U.S. 478 (1985).

M-69: FOOTNOTE 168

168. United States v. McGuire, 957 F.2d 310 (7th Cir. 1992).

M-69: FOOTNOTE 169

169. Acevedo, 111 S. Ct. at 1988; Ross, 456 U.S. 798.

INSERTS

M-69: FOOTNOTE 170

170. Horton v. California, 110 S. Ct. 2301 (1990) (eliminating requirement that the evidence be discovered 'inadvertently' by the officer).

M-69: FOOTNOTE 171

171. Coolidge v. New Hampshire, 403 U.S. 443 (1971); Hester v. United States, 265 U.S. 57 (1924) (open fields doctrine); United States v. McMillon, 350 F. Supp. 593 (D.D.C. 1972); United States v. Fisch, 474 F.2d 1071 (9th Cir. 1973) ("plain hearing" case wherein officers rented connecting hotel room to suspects, listened at connecting door and overheard information respecting narcotics conspiracy); Texas v. Brown, 460 U.S. 730 (1983) (after making a routine stop at a driver's license checkpoint, officer saw in driver's hand an opaque party balloon and in the glove compartment plastic vials, loose white powder, and extra balloons; plain view doctrine applied).

M-69: FOOTNOTE 172

172. United States v. Ventresca, 380 U.S. 102 (1965) (officers smelled fermenting mash from suspected dwelling); United States v. Johnston, 497 F.2d 397 (9th Cir. 1974) (odor from suitcase); United States v. Pierre, 932 F.2d.377 (5th Cir. 1991).

M-69: FOOTNOTE 173

173. Compare Hernandez v. United States, 353 F.2d 634 (9th Cir. 1966) (disallowing squeezing), with United States v. Lovell, 849 F.2d 910 (5th Cir. l988); United States v. Hahn, 849 F.2d 932 (5th Cir. 1988).

M-69: FOOTNOTE 174

174. United States v. Lee, 274 U.S. 559 (1927) (Coast Guard used search light); On Lee v. United States, 343 U.S. 747 (1952) (use of bifocals, field glasses, or telescope to magnify an object not forbidden); Dow Chemical Co. v. United States, 476 U.S. 227 (1986) ($22,000 aerial mapping camera to view commercial premises upheld); Florida v. Riley, 488 U.S. 445 (1989) (helicopter observation into defendant's residential greenhouse from 400 feet above ground fell within plain view doctrine).

M-69: FOOTNOTE 175

175. United States v. Kim, 415 F. Supp 1252 (D. Haw. 1976) (800 millimeter telescope with a 60 millimeter opening to view inside suspect's apartment violated fourth amendment where enhanced to point could see what suspect was reading l/4 mile away).

M-69: FOOTNOTE 176

176. Coolidge v. New Hampshire, 403 U.S. 443 (1971); Taylor v. United States, 286 U.S. 1 (1932) (where police, standing where they had a right to be, saw contraband in open view in a

garage by looking through a small opening, their warrantless entry to seize the contraband was unconstitutional; the information gained from the lawful view could have been used to obtain a search warrant).

M-69: FOOTNOTE 177

177. Cupp v. Murphy, 412 U.S. 291 (1973).

M-69: FOOTNOTE 178

178. Oliver v. United States, 466 U.S. 170 (1984); Hester v. United States, 265 U.S. 57 (1924).

M-69: FOOTNOTE 179

179. United States v. Dunn, 480 U.S. 294 (1987).

M-69: FOOTNOTE 180

180. Id.

M-69: FOOTNOTE 181

181. Oliver v. United States, 466 U.S. 170 (1984).

M-69: FOOTNOTE 182

182. Section 287(e) of the Act, 8 U.S.C. 1357(e).

M-69: FOOTNOTE 183

183. Section 287(d) of the Act, 8 U.S.C. 1357(d).

M-69: FOOTNOTE 184

184. United States v. Jacobson, 466 U.S. 109 (1984); United States v. Place, 462 U.S. 696 (1983); United States v. Beale, 736 F.2d 1289 (9th Cir.), cert. denied, 496 U.S. 1072 (1984).

M-69: FOOTNOTE 185

185. Horton v. Goose Creek Ind. School District, 690 F.2d 470 (5th Cir. 1982), cert. denied, 463 U.S. 1207 (1983); United States v. Massac, 867 F.2d 174 (3d Cir. 1989); United States v. Lovell, 849 F.2d 910 (5th Cir. 1988) (brief detention of luggage in custody of third party carrier to sniff for narcotics was not a search for fourth amendment purposes); United States v. Gutierrez, 849 F.2d 940 (5th Cir. 1988). But see United States v. Cagle, 849 F.2d 924 (5th Cir. 1988) (prolonged detention of defendant's suitcase constituted a seizure which exceeded limits of investigatory detention and could only be based upon probable cause).

INSERTS

M-69: FOOTNOTE 186

186. United States v. Taylor, 934 F.2d 218 (9th Cir. 1991); United States v. Morales-Zamora, 914 F.2d 200 (10th Cir. 1990).

M-69: FOOTNOTE 187

187. United States v. Tartaglia, 864 F.2d 837 (D.C. Cir. 1989); United States v. Stone, 866 F.2d 359 (10th Cir. 1989); United States v. Hardy, 855 F.2d 359 (10th Cir. 1989); United States v. DiCesare, 765 F.2d 890 (9th Cir.), amended, 777 F.2d 543 (9th Cir. 1985).

M-69: FOOTNOTE 188

188. United States v. Place, 462 U.S. 696 (1983); United States v. Lovell, 849 F.2d 910 (5th Cir. 1988); United States v. Attard, 796 F.2d 257 (9th Cir. 1986); United States v. McCranie, 703 F.2d 1213 (10th Cir.), cert. denied, 464 U.S. 922 (1983) (airport); United States v. Goldstein, 635 F.2d 356 (5th Cir.), cert. denied, 452 U.S. 962 (1981) (luggage in custody of common carrier).

M-69: FOOTNOTE 189

189. Horton, 690 F.2d at 481; Jones v. Latexo Schools, 499 F. Supp 223 (E.D. Tex. 1980). But see Doe v. Renfrow, 475 F. Supp. 1012 (N.D. Ind. 1979), aff'd in part, 631 F.2d 91 (7th Cir. 1980), cert. denied, 451 U.S. 1022 (1982).

M-69: FOOTNOTE 190

190. United States v. Thomas, 757 F.2d 1359 (2d Cir. 1985), cert. denied, 474 U.S. 819 (1986); accord, United States v. Dicesare, 765 F.2d 890 (9th Cir. 1985). But see United States v. Solis, 536 F.2d 880 (9th Cir. 1976) (canine sniff outside a mobile home in a public place where founded suspicion preceded use of dog held to be reasonable).

M-69: FOOTNOTE 191

191. United States v. Erwin, 803 F.2d 1505 (9th Cir. 1986); United States v. Attardi, 796 F.2d 257 (9th Cir. 1986); United States v. McCranie, 703 F.2d 1213 (10th Cir.), cert. denied, 464 U.S. 922 (1983).

M-69: FOOTNOTE 192

192. United States v. Massac, 867 F.2d 174 (3d Cir. 1989); Erwin, 803 F.2d 1505; McCranie, 703 F.2d 1213; Horton, 690 F.2d 470.

M-69: FOOTNOTE 193

193. United States v. Katz, 389 U.S. 347 (1967); United States v. Goldstein, 635 F.2d 356 (5th

Cir.), cert. denied, 452 U.S. 962 (1981); United States v. Bronstein, 521 F.2d 459 (2d Cir. 1975), cert. denied, 424 U.S. 918 (1976); see also United States v. Whitehead, 849 F.2d 849 (4th Cir. 1988) (finding that trains, like cars, have the same type of mobility and potential for flight from the jurisdiction justifying an exception to the warrant requirement); accord, United States v. Trayner, 701 F. Supp. 250 (D.D.C. 1988); United States v. Liberto, 660 F. Supp. 889 (D.D.C. 1987), aff'd, 838 F.2d 571 (D.C. Cir. 1988).

M-69: FOOTNOTE 194

194. See 8 C.F.R.287.4(a) for the list of INS officers authorized to issue subpoenas.

M-69: FOOTNOTE 195

195. See v. City of Seattle, 387 U.S. 541, 544 (1967); Donovan v. Lone Steer, Inc., 464 U.S. 408, 415 (1984).

M-69: FOOTNOTE 196

196. The Guidelines refer to regional commissioners. As these positions no longer exist, operational units should contact the appropriate headquarters component for further direction.

M-69: FOOTNOTE 197

197. Sections 245A(c)(5) and 210(b)(6) of the Act.

M-69: FOOTNOTE 198

198. Section 274A(b)(5) of the Act.

M-69: FOOTNOTE 199

199. 8 C.F.R.242.2(a).

M-69: FOOTNOTE 200

200. 8 C.F.R. 242.2(a)(3).

M-69: FOOTNOTE 201

201. 8 C.F.R.242.2(a)(4).

M-69: FOOTNOTE 202

202. Cf. United States v. Leon, 468 U.S. 897 (l984) (when officer acts in good faith belief that warrant was issued by magistrate but warrant was in fact defective, and action of officer is objectively reasonable, evidence seized may be admissible).

INSERTS

M-69: FOOTNOTE 203

203. INS v. Lopez-Mendoza, 468 U.S. 1032 (1984).

M-69: FOOTNOTE 204

204. Matter of Toro, 17 I&N Dec. 340 (BIA 1980).

M-69: FOOTNOTE 205

205. Wong Sun v. United States, 371 U.S. 471 (1963).

M-69: FOOTNOTE 206

206. United States v. Leon, 468 U.S. 897 (1984).

M-69: FOOTNOTE 207

207. 403 U.S. 388 (1971).

M-69: FOOTNOTE 208

208. Harlow v. Fitzgerald, 457 U.S. 800 (1982); Butz v. Economou, 438 U.S. 478 (1978).

M-69: FOOTNOTE 209

209. Harlow v. Fitzgerald, 457 U.S. 800 (1982).

M-69: FOOTNOTE 210

210. 51 Fed. Reg. 27021 (July 29, 1986).

M-69: FOOTNOTE 211

211. 28 U.S.C. 1679(b)(1).

M-69: FOOTNOTE 212

212. 28 U.S.C. 1346(b), 2680(h) (1982).

M-69: FOOTNOTE 213

213. United States v. Gilman, 347 U.S. 507 (1954).

M-69: FOOTNOTE 214

214. Pennington v. United States, 406 F. Supp. 850 (E.D.N.Y. 1976).

INSERTS

M-69: FOOTNOTE 215

215. See 28 C.F.R. 50.15 et seq.

M-69: FOOTNOTE 216

216. 28 C.F.R. 50.15(a)(4) and (b).

M-69: FOOTNOTE 217

217. 28 C.F.R. 50.15(a)(4)-(6).

M-69: FOOTNOTE 218

218. 28 C.F.R. 50.15(a)(6).

M-69: FOOTNOTE 219

219. 28 C.F.R. 50.15(a)(3).